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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**In the Matter of the Investigation Into)
Qwest Corporation’s Compliance with)
Section 271of the)
Telecommunications Act of 1996)**

**Docket No. UT-003022
(Workshop 4)**

**DIRECT TESTIMONY OF MICHAEL ZULEVIC
ON LOOPS, LINE SPLITTING, EMERGING SERVICES
AND GENERAL TERMS AND CONDITIONS ON BEHALF OF
COVAD COMMUNICATIONS COMPANY**

June 7, 2001

1 **DIRECT TESTIMONY OF MICHAEL ZULEVIC ON BEHALF OF COVAD**
2 **COMMUNICATIONS COMPANY**

3 **I. INTRODUCTION**

4 **Q. PLEASE INTRODUCE YOURSELF.**

5 A. My name is Michael Zulevic. I am the Director of Network Deployment, Special
6 Initiatives, for Covad Communications Company (“Covad”). In that capacity, I assist Covad in
7 evaluating both its network needs and the method or process by which to obtain or satisfy those
8 network needs. I also assist Covad in evaluating and negotiating contract terms and agreements
9 as they impact Covad’s network needs and the method by which to satisfy those needs.
10

11
12 **Q. MR. ZULEVIC, WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. Covad has asked me to present my recommendations to the Commission regarding
14 certain of the general terms and conditions contained in Qwest’s Statement of Generally
15 Available Terms and Conditions (the “SGAT”) relating to loops, line sharing, line splitting,
16 packet switching, and other emerging services issues.
17

18 Although I am not a lawyer, as I understand it, the SGAT alone does not satisfy Qwest’s
19 obligations under the Telecommunications Act of 1996 (the “Act”). Rather, Qwest’s current
20 performance also must be taken into account when this Commission determines whether Qwest
21 has satisfied the fourteen point competitive checklist contained in Section 271 of the Act. For
22 this reason, my testimony includes both comments on the actual language of the SGAT as well
23 as performance-based issues relating to the subjects of loops, line sharing, line splitting, packet
24 switching, and other emerging services issues.
25

26 **II. UNBUNDLED LOOPS**

1
2 **Q: WHAT CONCERNS DO YOU HAVE WITH RESPECT TO QWEST'S LOOP**
3 **PROVISIONING PROCESS?**

4 Several, although I will defer to Ms. Cutcher as to several of the performance-based
5 issues arising out of Qwest's loop provisioning process.

6 A significant area of concern for Covad is the fact that a large percentage of its orders go
7 into held status due to lack of facilities on the part of Qwest. This is of particular concern to
8 Covad because it has provided forecasts, by central office, to Qwest, so that Qwest could use this
9 data in planning and building facilities.¹ The information Covad provides, and the level and type
10 of information provided, is precisely what Qwest requested that Covad provide. Nonetheless, the
11 information contained in Covad's UNE forecasts appears not to be incorporated into Qwest's
12 network planning, however, since Covad has not experienced any meaningful improvement in
13 the provisioning of its lines.
14

15 Rather than deal with this issue head-on, Qwest implemented a "new build policy," in
16 which it states that it will reject all orders where there are no facilities and Qwest has no plans to
17 build any facilities to accommodate demand. A copy of this "build policy" is attached to Ms.
18 Liston's testimony as JML-37.

19 Qwest's build policy strikes me as yet another way by which Qwest can stymie
20 meaningful competition by CLECs in the State of Washington. Consequently, it appears to me
21 to be inconsistent with the spirit and letter of the Telecommunications Act of 1996. Indeed,
22 Covad believes that Qwest has some residual obligation under the Act to work to reasonably
23 accommodate CLEC demand.
24
25
26

1 I understand that Qwest objects to this position, on the basis of the 8th Circuit’s decision
2 in the *Iowa Utilities Board* litigation. However, I don’t think the issue is directly addressed in
3 that opinion, nor is it a final opinion since the Supreme Court will be rendering its opinion on
4 that decision at some point this year. Moreover, it appears that there may be an inconsistency in
5 Qwest’s position since the rates it charges for unbundled loops includes a “fill factor” (i.e., the
6 portion of its outside plant that is actually in use) that assumes the existence of spare capacity.
7 Because the rates Qwest charges includes a charge for assumed spare capacity, it strikes me that
8 CLECs are already paying for future construction in the form of the fill factor.

10 A final concern I have about the build policy is the fact that, while it makes clear that
11 CLECs will pay for new construction, nowhere does Qwest indicate how it will prioritize CLEC
12 demand for construction; whether it will accept all requests for new construction; what
13 percentage of the build costs the CLEC is responsible for; and who has ownership of the newly
14 built facilities once construction is completed.

17 **Q: WHAT OTHER CONCERNS DO YOU HAVE WITH RESPECT TO QWEST’S**
18 **LOOP PROVISIONING PROCESSES AND PERFORMANCE?**

19 A: My first concern has to do with the interval for conditioning loops. Based on information
20 previously provided by Qwest to CLECs, it appears to Covad that Qwest can condition and
21 provision loops within a five day period.

22 Conditioning is not a foreign or new concept to Qwest. In fact, Qwest has been
23 conditioning loops for its own services for years. Indeed, in most cases, conditioning – or the
24

25 ¹ In addition to the forecasting requirements contained in its interconnection agreements with Qwest, the settlement
26 agreement reached in the State of Washington requires the submission of CLEC forecasts. Therefore, this issue is
not moot, despite the withdrawal of the UNE forecasting requirement.

1 removal of a bridged tap or load coil -- is a fairly simple process. Specifically, conditioning
2 requires only that (1) the requested cable pair be located in the facility database; (2) the location
3 of the load points be identified; (3) this information be placed on a work request; and (4) the
4 work be performed. It is self-evident that the first three tasks are primarily clerical in nature. It
5 is only the fourth task, which a layman typically can perform in approximately an hour, which
6 requires any significant time or effort on the part of Qwest. From a practical standpoint,
7 therefore, it appears that a five day interval for conditioned loops is eminently feasible.

9 The only impediment I can see to a five day interval for the provisioning of conditioned
10 loops are constraints imposed by Qwest on itself in the forms of insufficient staffing or
11 inefficient allocation of work. These types of self-imposed constraints, however, should not be
12 determinative of the interval for conditioned loops.

14
15 **Q: DISCUSS YOUR CONCERN ABOUT THE QUALITY OF THE LOOPS QWEST**
16 **DELIVERS.**

17 A: Historically and currently, Qwest regularly fails to deliver good loops to Covad. Because
18 of this significant failure, Covad requires that the SGAT be amended to permit a CLEC to utilize
19 MLT testing in the pre-order phase to verify the quality of the loop delivered. MLT testing – or
20 mechanized loop testing -- is a method by which a CLEC can verify that a digital signal can
21 travel all the way from the CLEC's collocation space to the end user. It is a simple test, utilized
22 regularly by both Qwest and CLECs in the repair context, which requires only about 20 seconds
23 to perform. It is simple, easy, cost-efficient, and ensures that a good loop is delivered.

1 III. LINE SHARING

2 Q: MR. ZULEVIC, PLEASE DESCRIBE YOUR CONCERNS REGARDING
3 QWEST'S CURRENT LINE SHARING OFFERING.

4 A: It strikes me that Qwest's testimony focuses almost exclusively on the terms and
5 conditions relating to line sharing contained in the SGAT in support of its argument that it has
6 met its burden of proof under § 271. Qwest's SGAT, however, is only one aspect of satisfying
7 the competitive checklist. Rather, it is an absolute prerequisite to the satisfaction of the § 271
8 competitive checklist that Qwest demonstrate "its present compliance with the statutory
9 conditions for entry."²
10

11 Qwest has failed to demonstrate that it is currently complying with its obligations under
12 the Act. For example, Covad demonstrated to Qwest's satisfaction that Qwest had failed to train
13 its central office technical personnel regarding the proper method to "lift and lay" and cross
14 connect tie cables for line share orders. In fact, this problem was so bad that Covad personnel
15 often had to instruct Qwest's own CO technicians in the proper method to place cross connects.
16 As a consequence of Qwest's failure, Covad's line share orders were not provisioned properly,
17 which resulted in end user frustration, damage to Covad's reputation, and a loss of revenue.
18 Covad also was forced to incur significant time and labor costs because it must roll a truck not
19 only to the end user's premises, but also to the central office to verify that the splitter wiring and
20 testing procedures were done correctly in the first place.
21

22 After numerous complaints from Covad and other CLECs, Qwest agreed to "certify" its
23 COs in order to verify that all cross connects were correctly made and completed and to ensure
24

25 _____
26 ² Application by Bell Atlantic New York Under Section 271 of the Communications Act to Provide In-Region,
InterLATA Service in the State of New York, CC Docket No. 99-295, Mem. Op. and Order, FCC 99-404 (1999), ¶
37.

1 that splitters were properly installed. Qwest purportedly completed that process in December of
2 2000. Yet, Covad continue to experience problems with line shared orders due to incorrectly
3 wired splitters and/or incorrectly installed or missing cross connects.

4
5 Before, during and after the implementation of line sharing and the December 2000
6 certification of line share enabled COs, Covad suggested a simple, expedient and cost-efficient
7 method to resolve the vast majority of the issues created by Qwest's failure to properly train its
8 personnel and to require that such personnel use the internal manual when provisioning Covad's
9 line share orders. Specifically, Covad suggested that Qwest perform a data continuity test for
10 Covad's line share orders, a test that Qwest currently performs for its own Megabit DSL orders.
11 Covad also offered to provide Qwest with the equipment necessary to perform the data
12 continuity test. Qwest refused to perform the data continuity test, despite the fact that other
13 ILECs, like Bell South and Verizon, perform a similar test that accomplishes the same objective
14 as a data continuity test.
15

16
17 **Q: ARE YOU SATISFIED WITH QWEST'S INTERVAL FOR LINE SHARING?**

18 A: No; Qwest's proposed line sharing interval is too long. The work necessary to provision a
19 line shared loop is minimal; no work must be done in connection with the outside plant (except
20 under very limited circumstances), minimal work is required inside the CO, and very little
21 administrative work is required since the cable pair and central office equipment information
22 already has been ascertained. Indeed, all that is required is a simple "lift and lay," pursuant to
23 which one cross connect is replaced with two (and, on occasion, four), using the same cable pair
24 and switch office equipment.
25
26

1 Despite the apparent simplicity of the process, Qwest nonetheless currently insists on the
2 same five (5) business day interval for both stand alone and line shared loops. Qwest has
3 conceded that its current line sharing interval is improperly elongated, agreeing in the loops
4 workshop in Colorado that the line sharing interval would drop to three (3) business days as of
5 July 1, 2001.
6

7 Yet, even this interval is unduly long given the minimal amount of work required to
8 provision a line shared loop. The “numerous other order entry, assignment and provisioning
9 functions” that Qwest’s pre-filed testimony suggests requires a full three days rings hollow,
10 when set against the fact that line sharing has been in place for over one year and Qwest has had
11 the opportunity to resolve and, potentially automate, the line share provisioning process.
12

13 Covad suggests that Qwest adhere to a graduated line sharing interval, beginning with a
14 three-day interval and then dropping down to a one-day interval after six months. Because a
15 one-day interval would facilitate the entry of CLECs into the xDSL market in the State of
16 Washington, this Commission should follow the lead of other states, like Illinois, that mandate a
17 one-day interval for line share orders.
18

19 **Q: DO YOU HAVE OTHER CONCERNS WITH QWEST’S CURRENT LINE**
20 **SHARING OFFERING?**

21 **A:** Yes. Qwest’s SGAT permits it to unilaterally impede a CLEC’s rights to mount splitters
22 on the ICDF. Specifically, SGAT § 9.4.2.3.1 states that the POTS splitter will be installed either
23 on a relay rack or a main distribution frame under two circumstances: (1) where an ICDF is not
24 available; or (2) the CO has less than 10,000 lines. Despite this apparent prohibition, Qwest has
25 permitted other CLECs to mount their splitters on the MDF in offices with more than 10,000
26

1 lines, but has unfairly refused to accord Covad the same option. From my perspective, not only
2 is this discrimination, but also it gives to Qwest the power to unilaterally, and without warning,
3 alter Covad's rights to mount a splitter on the MDF simply by redesignating an MDF as an
4 ICDF. This concern is not without basis. I know that in other jurisdictions Qwest has taken this
5 precise step previously.
6

7
8 **Q: WHY DO YOU BELIEVE THAT QWEST IS OBLIGATED TO PERMIT LINE SHARING OVER FIBER?**

9
10 A: The FCC made clear in the *Line Sharing Reconsideration Order* that “the requirement to
11 provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in
12 the loop (e.g., where the loop is served by a remote terminal).” Despite the use of the word
13 “copper” in the *Line Sharing Order*, the FCC made clear that “use of the word ‘copper’ in
14 section 51.319(h)(1) was not intended to limit an incumbent LEC’s obligation to provide
15 competitive LECs with access to the fiber portion of a DLC loop for the provision of line-shared
16 xDSL services”:

17
18 In the absence of this clarification, a competitive LEC might undertake to
19 collocate a DSLAM in an incumbent’s central office to provide line-shared
20 xDSL services to customers, only to be told by the incumbent that it was
21 migrating those customers to fiber-fed facilities and the competitor would
22 now have to collocate another DSLAM at a remote terminal in order to
23 continue providing line-shared services to those same customers. If our
24 conclusion in the *Line Sharing Order* that incumbents must provide access
25 to the high frequency portion of the loop at the remote terminals as well as
26 the central office is to have any meaning, then competitive LECs must have
the option to access the loop at either location.

23
24 Moreover, nowhere has Qwest provided any evidence that line sharing over a fiber fed loop is
25 not technically feasible.
26

1 **IV. SUBLOOPS**

2 **Q: PLEASE DESCRIBE YOUR CONCERNS REGARDING THE TERMS AND**
3 **CONDITIONS IN THE SGAT RELATING TO SUBLOOPS.**

4 A: The FCC rules clearly states that CLECs are entitled to, and Qwest is obligated to
5 provide, subloop unbundling at any accessible point. Qwest, however, is attempting to evade its
6 unbundling obligations by requiring that CLECs install an intermediate facility called a “Field
7 Connection Point” or “FCP.” The FCP appears to be an unnecessary addition to the network,
8 which adds cost, complexity, time and potential point of failure. SGAT sections 9.3.1.3, 9.3.1.4,
9 and 9.3.4.1 must be modified to reflect Qwest’s legal obligations.
10

11 Moreover, Qwest makes CLEC access to subloops contingent upon the installation of an
12 FCP, which Qwest excludes from the interval contained in Exhibit C. Since subloop access is a
13 form of collocation, intervals for providing access to sub loops should never exceed the ninety
14 (90) day collocation interval recently mandated by the FCC. Consequently, SGAT §§ 9.3.1.4,
15 9.3.4.3.3, 9.3.5.2.1 and 9.3.5.2.3 must be revised.
16

17 Other concerns I have include the following. First, imposing the burden on CLECs to
18 construct a structure adjacent to Qwest’s accessible terminal in order to house the FCP (or
19 network interfaces associated with the FCP) is improper. Specifically, adding additional cabinets
20 or pedestals to an existing location will likely result in zoning and right-of-way problems, which
21 will in turn result in many requests being denied for “feasibility” reasons.
22

23 Second, Qwest should provide individual CLEC cross-connect blocks in the existing
24 cabinet rather than adding additional needless network devices, such as the FCP, which will also
25
26

1 require two cross-connects to be made for each subloop ordered. These blocks can very easily
2 serve as the point of demarcation between networks.

3 Third, to the extent a CLEC is required to locate the FCP outside the accessible terminal
4 due to “no space” at the existing Qwest accessible terminal, the same SGAT provisions
5 addressing no collocation space in central office should apply to the terminal, including the
6 opportunity for the denied CLEC to make a visual inspection of the terminal.
7

8 Fourth, Qwest must provide access to “accessible terminals” even if the terminal
9 ownership has been transferred to an affiliate. Competition must not be side-stepped by business
10 maneuvers such as transferring assets to unregulated affiliates.

11 Fifth, a process for testing after the provisioning of cross-connect collocation, but prior to
12 acceptance, should be developed. Finally, CLECs should be called prior to closing tickets.
13

14 V. DARK FIBER

15 **Q: PLEASE IDENTIFY YOUR CONCERNS REGARDING QWEST’S DARK FIBER
16 OFFERING.**

17 A: The *UNE Remand Order* requires Qwest to provide access to unbundled dark fiber. *UNE*
18 *Remand Order* at ¶ 326. Qwest’s SGAT proposal regarding dark fiber fails to meet the FCC
19 requirement that Qwest prove access to dark fiber at any technically feasible point.

20 Access to dark fiber must include access to unused frequencies on fiber optic systems
21 using Wave Division Multiplexing (“WDM”) technology. WDM allows a typical two-fiber
22 system to have the carrying capacity of many fibers using non-WDM technology. For this
23 reason, all unused frequencies on WDM systems should be considered the same as “dark fiber.”
24 Relatedly, Qwest should not be allowed to deny access to “dark fiber” unless both fiber and
25

1 unused WDM frequencies are not available. Covad suggests that these concepts be added to the
2 SGAT language.

3 4 **VI. PACKET SWITCHING**

5
6 **Q: WHY IS QWEST'S CURRENT PACKET SWITCHING OFFERING INSUFFICIENT?**

7
8 A: From a basic perspective, Qwest's proposed SGAT language in Section 9.20.2 is
9 insufficient to provide Washington consumers and businesses a competitive choice of broadband
10 DSL services. In particular, Qwest has refused to provide unbundled access to packet-switched
11 NGDLC architectures. Qwest only agrees to provide unbundled access to packet-switched
12 NGDLC in the following circumstances:

13 9.20.2.1 CLEC may obtain unbundled packet switching only when all
14 four of the following conditions are satisfied in a specific geographic area:

15 9.20.2.1.1 Qwest has deployed digital loop carrier systems, including but
16 not limited to, integrated digital loop carrier or universal digital loop carrier
17 systems or has deployed any other system in which fiber optic facilities
18 replace copper facilities in the distribution section.

19 9.20.2.1.2 There are no spare copper loops available capable of supporting
20 the xDSL services the requesting carrier seeks to offer.

21 9.20.2.1.3 Qwest has placed a DSLAM for its own use in a remote Qwest
22 Premises but has not permitted CLEC to collocate its own DSLAM at the
23 same remote Qwest Premises or collocating a CLEC's DSLAM at the same
24 Qwest Premises will not be capable of supporting xDSL services at parity
25 with the services that can be offered through Qwest's Unbundled Packet
26 Switching.

9.20.2.1.4. Qwest has deployed packet switching capability for its own use.

23 All of the alternatives posed by Qwest are insufficient.

24
25 **Q: EXPLAIN WHY THE AVAILABILITY OF SPARE COPPER (Section 9.20.2.1.2)
26 IS NOT A VIABLE ALTERNATIVE.**

1 A: The use of spare or “home run” copper loops to provision xDSL service is far from being
2 a feasible alternative. In many cases, an NGDLC or remote DSLAM is deployed precisely
3 because available copper is not suited (e.g., too long) for xDSL service. In addition, because the
4 length of the copper loop limits the xDSL bandwidth available to the end-user, CLECs would be
5 at a considerable competitive disadvantage to Qwest’s deployment if CLECs were required to
6 provide service on spare loops. For example, while Qwest might be able to provide high-
7 bandwidth VDSL service through a RT architecture (where the copper distribution subloop may
8 only be 2000-3000 feet long), a CLEC offering service over a longer, spare copper loop may
9 only be able to provide ADSL service.
10

11 In addition, if Qwest deploys fiber fed NGDLC systems with a plug-in card based
12 DSLAM functionality, or remote DSLAMs, at the remote terminal, it can potentially cause
13 interference problems to DSL services provided over spare copper loops to DSLAMs collocated
14 in the central office, as the remote systems will be transmitting data at higher power levels. Such
15 degradation could materially diminish a competitor’s ability to effectively provide service over
16 spare copper loops.
17

18
19 **Q: DESCRIBE WHY COLLOCATION OF DSLAMS AT REMOTE TERMINALS**
20 **(SGAT § 9.20.2.1.3) IS NOT A VIABLE ALTERNATIVE.**

21 A: In general terms, collocating DSLAMs as an alternative requires CLECs to collocate the
22 equipment necessary to perform the DSLAM and multiplexing functionality along with optical
23 electronics in every Qwest remote terminal served by fiber. In addition, CLECs will need to
24 make all the necessary cross connections and install Field Connection Points (“FCPs”) at each
25 remote terminal between the end user’s copper and its collocated equipment. No CLEC is in the
26

1 financial position to replicate the Qwest network and collocate DSLAMs at a sufficient number
2 of remote terminals to offer a viable competitive service. This point is even more significant in
3 light of the fact that the CLEC would be placing this equipment to compete for fewer than 300
4 customers per location. Qwest itself has acknowledged in other jurisdictions that collocation of
5 remote DSLAMs is extraordinarily cost prohibitive.
6

7 Moreover, collocating DSLAMs in Qwest's remote terminals would slow down Covad's
8 entry into the local market or, alternatively, delay expansion of our existing line sharing service
9 offerings.

10 **Q: DO YOU HAVE A PROPOSAL THAT WOULD RESOLVE THE ISSUES YOU**
11 **HAVE IDENTIFIED?**

12 A: Yes. Covad – and any other CLEC – can collocate DSL line cards. The line card
13 performs the DSLAM functionality necessary to generate and receive transmissions across the
14 unbundled loop from the end-user through the remote terminal back to the central office.
15 Different line cards offer different DSL functionalities and quality of service (QoS) guarantees.
16 The installation of other technically feasible line cards would support the other advanced
17 services that CLECs need to provide to differentiate their products in a competitive market.
18

19
20 **Q: PLEASE STATE YOUR CONCERNS WITH THE OTHER PROVISIONS**
21 **RELATING TO PACKET SWITCHING.**

22 A: SGAT § 9.4.1.1 is deficient for two additional reasons:

23 (1) The clear import of sentences two and three is to require CLECs to remotely deploy
24 DSLAMs. As Covad has made clear previously, it believes that Qwest is obligated to provide
25 unbundled access to any NGDLC or NGDLC functionality (including remote DSLAMs), thereby
26

1 obviating the need for CLECs to remotely deploy DSLAMs, and lease fiber transport from the
2 CO to the remote terminal. Therefore, Covad strongly urges Qwest to recognize its obligation to
3 provide unbundled access to the NGDLC and functionalities, and to delete the second and third
4 sentences of this paragraph.
5

6 (2) With respect to fourth sentence, while Covad does not object to the intent of this
7 sentence *per se*, Covad does raise two specific objections. First, to the extent that Qwest deploys
8 any line sharing technology or transport mechanism in the future, access to such future
9 developments should be automatically and immediately available to CLECs, to the extent it is
10 technically feasible. Absent such a requirement, during the time period in which Qwest's
11 obligation to provide that access is clarified by the FCC or this Commission, Qwest likely will be
12 able to capture much of the market made available by the improvement in technology, to the
13 clear competitive detriment of CLECs. Covad therefore strongly recommends that the phrase
14 "and Qwest is obligated by law to provide access to such technology" be deleted.
15

16 Covad also objects to the requirement that the "rates, terms and conditions for line
17 sharing" be amended before access will be provided to any future line sharing and transport
18 technologies deployed by Qwest. As with the competitive disadvantage to CLECs inherent in
19 the delay relating to the crystallization of Qwest's legal obligations, the delay sustained during
20 the time the parties negotiate and reach agreement on new rates, terms and conditions creates a
21 sustainable competitive advantage for Qwest. This phrase should be deleted.
22

23 As outlined in a recent news release, attached hereto as Exhibit MZ-2, Qwest plans to
24 reach 1.3 million additional homes and "more than double the number of miles customers can
25 live from a central office" by remotely deploying DSL technology. This effectively can and will
26

1 eliminate competition in these more distant areas of the network unless this Commission accepts
2 my recommended changes.

3 **VII. LINE SPLITTING**

4 **Q: PLEASE STATE THE BACKGROUND AND PURPOSE OF YOUR**
5 **TESTIMONY.**

6 A: The FCC recently made clear in Order 01-26, dated January 19, 2001, that ILECs, like
7 Qwest, must permit competing carriers to engage in line splitting. Line splitting allows voice
8 CLECs either to provide xDSL service over their existing voice loop, or to partner with a data
9 CLEC to provide xDSL service over the high frequency portion of the voice provider's loop. As
10 a consequence, the end-user can receive voice and xDSL service over a single, shared line, but
11 has the option of choosing from multiple providers of voice and xDSL services, rather than being
12 constrained –as with line sharing – to use Qwest and a data CLEC for line shared voice and
13 xDSL service.
14

15 The purpose of my testimony is to provide current evidence addressing Qwest's
16 requirement to provide line splitting in the State of Washington: (1) basic requirements for line
17 splitting, (2) ordering process, (3) provisioning of different order types, (4) splitter ownership,
18 and (5) implementation schedule.
19

20 **1. Basic Requirements for Line Splitting (SGAT §§ 9.21, *et seq.* and 9.24, *et*** 21 ***seq.*).**

22 **a. Concerns Regarding Qwest's "Line Splitting" Offering.**

23 In SGAT §§ 9.21 and 9.24, Qwest spells out its "line splitting" offerings. In these
24 sections, Qwest limits line splitting to the context in which the voice service is provided over a
25 UNE-P loop. Qwest also has offered another form of "line splitting", which it refers to as "loop
26 splitting." This product uses a UNE loop rather than a UNE-P as the basis for the service. It is

1 Covad’s position that this should not be considered as an offering separate from “line splitting”
2 and that Qwest should be under the same legal obligation to provide this capability as it is when
3 providing UNE-P “line splitting.” Qwest’s limitation on line splitting, as identified in SGAT §§
4 9.21 and 9.24 therefore is improper because the FCC has made clear that line splitting must be
5 made available through all of Qwest’s loop-based products including, but not limited to,
6 unbundled loops, UNE-P, EELs and resale services. Covad believes, therefore, that § 9.21 and
7 9.24 (and all other affected sections) be revised to make clear that line splitting is available over
8 all of Qwest’s loop-based products.
9

10 Covad also objects to the language contained in § 9.21.1, which provides that the voice
11 CLEC will drive the line splitting process. Covad believes that this provision (and all other
12 affected sections) should be revised to permit either the CLEC or the DLEC initiate and/or
13 coordinate the line splitting process. This language also should be revised to encompass the
14 likely scenario in which a CLEC and DLEC enter into a contractual relationship in which one
15 serves as the agent for the other. In this situation, again, either the CLEC or the DLEC should be
16 authorized to initiate and/or coordinate the line splitting process.
17

18 **b. Basic Concepts Applicable to Line Splitting**

19 In the case of an existing voice provider’s service, line splitting must be made available
20 using the existing loop, unless the loop is not capable of supporting xDSL services. This
21 inability may result where the loop is currently using some form of pair gain device, such as
22 digital loop carrier (“DLC”), or contains load coils or excessive bridged taps. In these cases,
23 Qwest must be required to identify an xDSL capable loop and arrange for a line and station
24 transfer to move the existing voice service to the new loop, or remove load coils and bridged tap.
25
26

1 This must be done in a routine manner, without requiring additional orders from the CLEC and
2 without any disruption to the end-user customer's service. Covad proposes that this information
3 be provided via an accurate and dependable pre-qualification tool.
4

5 Qwest is obligated equally to make all necessary changes to permit line splitting,
6 including (1) network modifications; (2) OSS modifications for pre-ordering, ordering,
7 provisioning, maintenance, repair and billing; and (3) changes to existing process flows in order
8 to address the differences between line sharing and line splitting. Because of the identify of the
9 line sharing and line splitting services, Covad reasonably and with good cause anticipates that
10 the OSS and process changes will require minimal effort and expense on Qwest's part, and
11 without any significant delay.
12

13 Qwest also has the obligation to perform any central office work required to provision
14 line splitting. It is Covad's position that many line splitting orders will be a migration only from
15 a line sharing arrangement and will require no central office work, *i.e.*, "records only" orders.
16 Regardless of whether a line splitting order is a "records only" order, Qwest must perform all
17 work necessary for the provisioning of line splitting, and do so in the most efficient manner,
18 without service disruption to the end-user customer.
19

20 **2. Ordering Process**

21 It is imperative that Qwest provide a single order process for the provisioning of line
22 splitting, using a non-design, "flow through" order process. This order should be provided by
23 either the voice provider CLEC, or the data CLEC, and identify the xDSL provider partner,
24 together with the information relative to provisioning the data or voice portion of the service.
25 Stated conversely, separate orders from both the voice provider and the data provider are not
26

1 necessary and should not be required. Additionally, where an order requires only the migration
2 of an existing line sharing service, or the ILEC's combined voice and data service, to line
3 splitting, there is no need for loop qualification to take place and this step should not be required.

4 **3. Provisioning of Different Order Types**

5 Qwest must take the steps necessary to provide for at least the following line splitting
6 order types – (1) adding xDSL to an existing voice service; (2) provisioning a new voice service
7 with xDSL; (3) migrating a Qwest voice customer to line splitting; (4) migrating a Qwest voice
8 and data customer to line splitting; (5) migrating line sharing customer to line splitting; (6)
9 migrating a UNE data service to line splitting; (7) changing data providers on a line splitting
10 customer's line; and (8) changing voice providers on a line splitting customer's line
11

12 All line splitting order activities listed above must be done with a single order and with
13 no service disruption to the end-user customer. Qwest must provision line splitting without
14 requiring any more cross-connects or adding any additional tie cable length to the overall service
15 than would be required for line sharing. Given that many line splitting orders are expected to be
16 migrations from line sharing (an order requiring no physical work in the central office or in the
17 outside plant, but only a records change), a one business day interval would seem appropriate for
18 all line splitting orders.
19

20 The only exceptions to Covad's proposed provisioning requirements are the migration of
21 an existing loop to an xDSL capable loop by way of a line and station transfer, or for removing
22 load coils or excessive bridged tap. For these unique situations, a five day interval is reasonable,
23 since a dispatch would be required to transfer the customer's service to the new loop, or to de-
24 condition the existing loop. As with line sharing, Covad is willing to accept a "phased" approach
25
26

1 to line splitting, with provisioning intervals for orders not requiring a dispatch starting at three
2 days initially, declining to Covad's recommended one day interval over a three month period
3 starting from the effective date of the FCC's order.

4 **4. Splitter Ownership**

5 Although the FCC has declined to rule on the issue of splitter ownership at this time
6 (FCC 01-26 para. 25), Covad believes that Qwest-owned "outboard" splitters must be made
7 available for use in line splitting. "Outboard" refers to splitters which are stand alone devices
8 and are not an internal part of a DSLAM. "Outboard" splitters must be made available where
9 they are used by Qwest to provision its own combined voice and data services or to provide line
10 sharing for xDSL providers. Multiple service providers can easily share "outboard" splitters.
11 Those splitters that are internal to the DSLAM are commonly referred to as "integrated" splitters.
12 By requiring Qwest to provide access to its "outboard" splitters, competition will be served by
13 reducing the complexity of migrations among competitive carriers, and reducing the possibility
14 of end-user customer service interruption.
15

17 **5. Implementation Schedule**

18 It is Covad's position that implementation of line splitting should commence
19 immediately, and as a collaboration of all CLECs wishing to line split. CLECs have been asking
20 for line splitting capability since the early discussions on line sharing and have been refused
21 competitive access to this customer base for many months. Qwest began line sharing just over a
22 year ago, and many problems have yet to be resolved; line splitting implementation issues,
23 however, should be resolved on a more expedited basis. Because there are many similarities
24 between line sharing and line splitting – with identical implementation issues that were or shortly
25

1 will be resolved in connection with line sharing – a more aggressive implementation schedule is
2 appropriate. Indeed, full implementation of line splitting should be completed by July 1, 2001.

4 5 **VIII. FORECASTING**

6 **Q: MR. ZULEVIC, CAN YOU DESCRIBE QWEST'S FORECASTING PROCESS**
7 **AND THE CONCERNS IT RAISES FOR COVAD?**

8 A. Qwest unilaterally has imposed forecasting requirements on CLECs at several places in
9 its SGAT. Although forecasts appropriately may be required if Qwest can demonstrate an actual
10 need for such forecast, any forecast requirement should be carefully reviewed to ensure that the
11 forecasting requirement not be converted into an opportunity by which Qwest may impose an
12 unfair and anti-competitive burden on CLECs. The forecasts thus should be (1) as narrowly
13 tailored as possible; (2) easy to complete; (3) submitted only on a bi-annual basis; (4) matched
14 with an equally commensurate obligation on the part of Qwest to use the forecasts; and (5)
15 subject to strict requirements designed to ensure the confidentiality of the information contained
16 in the forecasts.

17
18
19 **Q: IS THERE A BASIS FOR YOUR CONCERN THAT A FORECAST MAY BE**
20 **USED FOR AN UNFAIR AND ANTI-COMPETITIVE PURPOSE?**

21 A: Absolutely. Covad provides on a quarterly basis both UNE and collocation forecasts
22 broken down to the wire center level. The production of this information imposes a significant
23 burden on Covad. Yet, Covad undertook this burden in an effort to ensure that Qwest would
24 meet its demands to the maximum extent possible. As far as we can tell, however, the
25 submission of a forecast in no way facilitated and/or improved Qwest's ability to meet Covad's
26 demand, much less the performance it actually rendered.

1 A good example of this is Covad's line sharing experience. Covad's forecasts indicated
2 Covad's anticipated demand for both UNE loops and line shared loops. Despite that clear
3 indication of demand, Qwest was unable or unwilling to roll out the training and personnel
4 sufficient to meet Covad's line shared orders, despite being on notice of that demand.
5 Specifically, Covad experienced several problems with improperly, incorrectly or unconnected
6 splitters. Had Qwest trained its line sharing personnel with an eye toward satisfaction of
7 anticipated line share demand, these problems would not have occurred.
8

9 At the end of the day, the forecast requirement resulted in Covad expending a great deal
10 of time and money without any return on its investment. Because Qwest likely did not have to
11 incur the same time and money costs for an equally fruitless return, it is clear that the forecasting
12 requirement can be used to unfairly and improperly burden CLECs with additional costs and
13 obligations from which Qwest itself is free.
14

15
16 **Q: WHAT DO YOU MEAN BY THE PHRASE "FORECASTS SHOULD BE AS**
17 **NARROWLY TAILORED AS POSSIBLE"?**

18 A: Compiling the information for use in, and the preparation of, forecasts required by Qwest
19 is a time- and resource-consuming process. The Commission should review closely Qwest's
20 forecasting requirements to determine whether all information currently required is necessary for
21 Qwest's network planning and deployment. Qwest should be permitted to require in a forecast
22 only that information which is necessary for the provisioning of service and the deployment of
23 sufficient network capacity.
24

25 **Q: YOU INDICATE THAT EASE AND SIMPLICITY IN FILLING**
26 **OUT THE FORECAST FORM IS IMPORTANT. WHY IS THAT?**

1 A: Covad recommends that the format required for the forecast be easily understood and
2 easy to complete. To the extent that the provisioning of, or the interval at which, a particular
3 facility or network element properly is conditioned on the accuracy of the information contained
4 in a forecast, *see, e.g.*, SGAT §§ 8.4.2.4-8.4.4.4, it is critical that the forecast form be easy both
5 to understand and to complete in order to avoid the inclusion of inaccurate information as a result
6 of a confusing form, rather than substantively erroneous forecast information.
7

8
9 **Q: YOU USED THE WORD “PROPERLY” IN THE ANSWER YOU JUST GAVE. DO YOU QUESTION THE FORECAST REQUIREMENT?**

10 A: Not per se. What I do challenge is Qwest’s ability or right to condition the interval for
11 collocation – or the time for the provision of any type of interconnection, collocation or
12 unbundled access or network element – on the submission of a forecast. Although, as it applies
13 to Covad, Qwest’s current forecasting requirements condition only the interval for collocation on
14 the submission of a forecast, under no circumstances should the collocation interval (1) exceed
15 ninety (90) days or, for cageless collocation, forty-five (45) days; or (2) be impacted by
16 submission of a forecast where no infrastructure is required to provision the collocation space.
17 Ninety or forty-five days is more than sufficient time to accomplish all work necessary to
18 provision a collocation space.
19

20
21 Qwest may not appropriately condition the interval for the provisioning of collocation
22 space requiring no infrastructure on the submission of a CLEC forecast. As Qwest explained in
23 its pre-filed testimony, Qwest is “adamant about the use of collocation forecasts because, in some
24 instances, Qwest must complete major structural changes in order to provision the requested
25 collocation.” Where no infrastructure is required for a particular unforecasted collocation space,
26 however, the purportedly determinative fact giving rise to Qwest’s “adamance” does not exist.

1 As a consequence, the “planning” Qwest must undertake in order to meet collocation demands is
2 non-existent.

3 Ms. Bumgarner contends that the interval contingency is the only method by which it can
4 “incent” CLECs to provide forecasts. That argument, however, requires this Commission to
5 believe that CLECs would cut off their noses to spite their own faces. That is to say, Qwest
6 believes a CLEC willingly would jeopardize its ability to timely receive adequate collocation
7 space (and thus impair its business) if only to obtain the brief pleasure of playing a forecasting
8 game with Qwest. To state plainly the rationale underlying Qwest’s premise is to illuminate its
9 fallacy.
10

11 It is clear that Qwest's decision to condition the collocation interval on the submission of
12 a forecast in this context is an effort to elongate its provisioning interval by making CLECs
13 "preorder" collocation.
14

15 To the extent that a collocation interval may properly be conditioned on the submission
16 of a forecast, which I seriously question, the parties must have additional discussion regarding
17 the accuracy requirement contained in SGAT § 8.4.1.4.
18

19 **Q: WHY DOES COVAD ADVOCATE THE SUBMISSION OF FORECASTS ON A**
20 **BI-ANNUAL BASIS?**

21 A: Several reasons, actually. First, the burden imposed on Covad to provide forecasts is
22 substantial. Consequently, it would be unfair to require Covad to undertake this process on any
23 more frequent basis. More importantly, a forecast provided at any interval more frequent than
24 every six months would be of minimal value to Qwest in its network planning. Specifically, a
25 forecast provided on a monthly or quarterly basis likely will be subject to revision and change by
26 Covad – particularly given the fact that the tech economy remains in a state of flux. The

1 forecast, therefore, will be of no value to Qwest when it purportedly seeks guidance and
2 direction from CLECs in its network planning and expansion.

3
4 **Q: DO YOU BELIEVE THAT QWEST IS UNDER AN OBLIGATION TO ACT
5 UPON THE FORECASTS SUBMITTED BY CLECs?**

6 A: Absolutely. You see, according to Qwest, the sole purpose of requiring a forecast is to
7 ensure either that there is sufficient capacity in Qwest's network to provision services, *see, e.g.*,
8 SGAT § 7.2.2.8.4 ("Seven (7) months after submission of the initial forecast, Qwest will have
9 the necessary capacity in place to meet the CLEC forecast."), or to permit Qwest adequate time
10 to anticipate and plan for CLEC demand. Yet, while Covad adheres to its obligation to provide
11 forecasts, it appears that Qwest wholly disregards those forecasts in its network planning. At no
12 point in its relationship with Qwest has Covad seen any benefit from the submission of a forecast
13 as far as Qwest's preparation for, and ability to, meet Covad's demand.
14

15 Requiring Qwest to demonstrate and actually act upon a forecast is reasonable, given
16 Qwest's articulated rationale for requiring a forecast. Covad therefore expects and anticipates
17 that Qwest will act consistently with the forecast it provides.

18 The obligation to act upon CLEC forecasts should be reinforced by the imposition of
19 penalties set forth in the SGAT in the event that Qwest fails to consider and act upon the
20 forecasts provided.
21

22 **Q: DO YOU BELIEVE THAT QWEST SHOULD BE SUBJECT TO AN
23 OBLIGATION TO PROVIDE FORECASTS TO CLECs?**

24 A. Yes. If Qwest is required to share its forecasts for its network growth, CLECs can
25 intelligently market their products, as well as direct their demand, to areas where Qwest will
26

1 have facilities available. Covad therefore recommends that the parties discuss a procedure by
2 which Qwest will share its network plans with CLECs.

3 A forecast reciprocity requirement also would advance the business objectives of both
4 Qwest and the CLECs. For example, if Qwest shared with Covad where and when it anticipates
5 rolling out next generation digital loop carriers (“NGDLC”), Covad could provide Qwest with
6 useful input on NGDLC deployment and assist in the development of remote terminal access.
7 This type of cooperative arrangement not only would assist Qwest in complying with its
8 obligations under the *UNE Remand Order*, but also would alleviate some of the problems Covad
9 experiences with held orders/orders denied for service. Similarly, if Qwest shared with Covad its
10 forecasted network planning, Qwest and Covad could work cooperatively to serve end users in a
11 more timely (and therefore less frustrating) manner. Covad has asked Qwest to provide this
12 information prior to joint planning meetings but Qwest has been unwilling to do so unless Covad
13 pays to have the information gathered and provided.
14
15

16
17 **Q: DESCRIBE COVAD’S CONCERNS REGARDING CONFIDENTIALITY.**

18 A: A critical issue resulting from the forecast requirement is the method by which Qwest
19 will maintain the confidentiality of that forecasted information. Specifically, Covad has
20 significant concerns regarding improper distribution within, and use by Qwest of, the forecasted
21 information for Qwest’s own competitive purposes. Strict confidentiality requirements should
22 be uniformly included throughout the SGAT, and supplemented by severe penalties if the
23 confidentiality obligations are breached.
24
25
26

1 While many sections of the SGAT have been revised to address this concern by
2 specifically limiting distribution within Qwest to “network and growth planning personnel,” this
3 limitation on distribution is not uniform throughout the SGAT. For example, § 5.16 of the
4 SGAT contains only a general provision obligating Qwest not to disclose the confidential
5 information provided by CLECs in their forecasts.
6

7 To foreclose the potentially improper review and use within Qwest of Covad’s
8 confidential information, in addition to the SGAT provisions limiting distribution of forecasts
9 only to specifically identified personnel involved in network planning/ deployment, the SGAT
10 also should be revised to specifically exclude from access to that information any individual not
11 included on the authorized list of recipients. Additionally, these specifically identified
12 individuals should be required to execute a non-disclosure agreement; and penalties should be
13 imposed on both Qwest and individual employees if the non-disclosure obligation is breached.
14

15 **Q: ARE THERE ANY OTHER ISSUES RELATING TO FORECASTING THAT**
16 **YOU WOULD LIKE TO ADDRESS?**

17 A: Like other CLECs, Covad would like clarification regarding SGAT § 7.2.2.8.6 and,
18 specifically, the pro rata calculation. Covad is also interested in pursuing whether Qwest will
19 agree to accommodate, act upon, and keep confidential voluntary CLEC forecasts for UNEs.
20 Relatedly, to the extent Qwest will accommodate and act upon voluntary UNE forecasts, Covad
21 requests clarification as to whether Qwest will agree both to act on such forecasts and to provide
22 CLECs with its forecasts to permit them to focus intelligently their marketing efforts.
23
24
25
26

1
2 **IX. BONA FIDE REQUEST PROCESS**

3 **Q: PLEASE DESCRIBE COVAD'S CONCERNS REGARDING QWEST'S BFR**
4 **PROCESS.**

5 A: As an initial matter, the BFR process, as set forth in Section 17 of the SGAT, is replete
6 with opportunities for Qwest to delay the provision of any product or service requested pursuant
7 to the BFR process. For example, there is no specific time period by which Qwest may request
8 the "necessary information" not contained in a CLEC's initial BFR form. The lack of specificity
9 in the BFR provisions necessarily builds in the opportunity for abuse by Qwest and the
10 consequent result of delay.
11

12 Another area of concern is the fact that Qwest determines both whether the requested
13 product or service is technically feasible and whether it is required by Act. With respect to the
14 technical feasibility issue, the SGAT should be revised to include the assumption that the product
15 or service requested is technically feasible and will be provided upon demand. The SGAT
16 therefore should place the burden on Qwest to demonstrate that the requested product or service
17 is not technically feasible, as well as to delineate the method and time by which that issue will be
18 raised and resolved. Absent the inclusion of these requirements, Qwest can abuse the discretion
19 granted to it by this paragraph and deny the provision of a particular service or product, to the
20 detriment of CLECs who, at best, face a significant delay until the technical feasibility issue is
21 resolved, and at worst, have no ability under the SGAT to challenge that determination.
22

23 Similarly, permitting Qwest to determine in its sole discretion whether it is obligated by
24 the terms of the Act to provide the service or product requested raises the same issues as does the
25 technical feasibility issue. Specifically, Qwest can deny a BFR on the grounds it is under no
26

1 legal obligation to provide the product or service requested. Not only does this provision ignore
2 the fact that this Commission can impose unbundling obligations in addition to those enumerated
3 by the FCC, but also it ensures that delay and, potentially, outright denial, will result.

4 Qwest also should be obligated to provide all necessary back up documentation and
5 support for the BFR quote it provides to CLECs at the time that quote is provided. This
6 requirement is reasonable, and also eliminates the ability of Qwest to insert additional delay into
7 the BFR process. A CLEC should not be obligated to initiate an audit in order to obtain this type
8 of basic information.

9 Qwest also should be obligated to set an outside time limit by which it will provision the
10 product or service requested by a CLEC pursuant to the BFR process.

11 Finally, Covad has a number of questions regarding the provisions relating to BFR that
12 require an answer from Qwest. Until such answers are procured, I cannot comment on certain
13 issues raised by the BFR language contained in the SGAT.

14 **Q: ARE THERE ANY OTHER CONCERNS YOU HAVE WITH QWEST'S BFR**
15 **PROCESS?**

16 **A:** Its difficult to determine at this point, given that both the SGAT lite and Qwest's prefiled
17 testimony raises more questions than it answers with respect to the BFR process. Accordingly, I
18 reserve the right to provide additional testimony and comments at the workshop or at whatever
19 time Qwest provides additional details and information regarding the BFR process.

20 **X. GENERAL TERMS AND CONDITIONS**

21 **Q: MR. ZULEVIC, CAN YOU IDENTIFY THOSE GENERAL TERMS AND**
22 **CONDITIONS THAT ARE CAUSE FOR CONCERN FOR COVAD?**

1 A: Yes. The general terms and conditions that I have questions or concerns about include
2 the following:

3 **Section 1.4**

4 Section 1.4 should be revised to make clear that CLECs can “pick and choose” from
5 various provisions contained in the SGAT. As currently drafted, Section 1.4 suggests that
6 CLECs must adopt the SGAT in whole.
7

8 **Section 1.7**

9 Section 1.7 should be revised to permit CLECs to take advantage of any term or
10 provision contained in the SGAT until such time as the Commission approves any change or
11 amendment to, or withdrawal of, such provision.
12

13 **Section 1.8**

14 Section 1.8 (including subparts) is very confusing because it mixes and matches phrases
15 and terms relating to provisions that are “legitimately related” or “unrelated” to any provision
16 “picked and chosen” by a CLEC. Section 1.8 must be revised to address separately these two
17 issues. Additionally, there are several unanswered questions created by this provision that must
18 be discussed and resolved during the workshops on general terms and conditions.
19

20 **Section 2.3**

21 While Section 2.3 addresses “direct” conflicts between the SGAT and external Qwest
22 documents referenced therein, it in no way addresses the situation in which the external
23 document (1) does not directly conflict with an SGAT term; (2) imposes obligations and duties
24 in addition to those contained in the SGAT, or (3) imposes additional obligations and duties in
25 situations in which the SGAT is silent.
26

1 **Section 3**

2 The entirety of Section 3 suffers because it requires the submission of a lengthy CLEC
3 questionnaire even where the CLEC already has an interconnection agreement with Qwest and is
4 simply “picking and choosing” provisions for inclusion in its interconnection agreement. There
5 appears to be no basis upon which Qwest can or may require the submission of a questionnaire
6 under these circumstances.
7

8 **Section 5.1**

9 Section 5.1.3 is unclear and confusing. I believe that additional discussion on this section
10 is required before I can provide any appropriate comments.
11

12 **Section 5.4**

13 Section 5.4 describes the terms for payment for services provided under the SGAT.
14 Covad demands that a provision be included that explicitly permits CLECs to challenge the
15 amount charged and to require the provision by Qwest of all back up documentation in order to
16 permit the resolution of the billing dispute. In the case of an ICB price quote such as that
17 provided for some collocation requests, the back up documentation must be provided in a timely
18 manner that will allow for Qwest’s completion of the collocation work in the specified interval,
19 should the pricing dispute be resolved. Additionally, the SGAT should be revised to make clear
20 that a CLEC need not pay any disputed amounts pending resolution of that billing dispute, nor
21 may Qwest assess any penalties, late payment charges, or interest on such disputed amounts.
22 CLECs should not be deprived of the benefit of retaining disputed amounts until the dispute has
23 been resolved satisfactorily.
24
25
26

1 Relatedly, any billing issues successfully disputed by a CLEC should be resolved on the
2 basis of a cash payment, not the issuance of a credit to the CLEC. This ensures that Qwest and
3 CLECs are treated in the same manner in the event of a billing dispute – via a cash payment.
4

5 The SGAT also should be revised to eliminate any ability on the part of Qwest to
6 condition the provision of service under the SGAT on payment of any and all amounts owed by a
7 CLEC to Qwest or on a deposit made by a CLEC. Because the parties’ business and
8 contractual relationships may be memorialized at places other than the SGAT, Qwest may not
9 use the SGAT to hijack, undermine and eliminate CLECs’ rights under separate and independent
10 agreements.

11 Covad objects to the requirement that CLECs provide a deposit to Qwest prior to the
12 resumption of service under the SGAT. Such requirement is draconian and may preclude a
13 CLEC from seeking and obtaining service and products under the SGAT. Additionally, to the
14 extent that a deposit may be required, Covad has several unanswered questions regarding
15 whether a deposit always will be required; under what circumstances will a deposit be required;
16 how the amount of the deposit will be determined; where the deposit will be held; the amount
17 and terms under which interest on the deposit shall accrue; and the circumstances under which
18 the deposit requirement will be augmented, decreased or terminated.
19
20

21 **Section 5.8**

22 Section 5.8, Limitation of Liability, also is cause for concern to Covad. Specifically, this
23 particular provision limits Qwest’s liability to Covad for any Qwest failure of
24 performance/Qwest breach of the SGAT to “the total amount that is or would have been charged
25 to the other Party by such breaching Party for service(s) or function(s) not performed or
26

1 improperly performed, including without limitation direct damages for loss of or damage to the
2 CLEC's collocated equipment located within collocation space." Although I am not a lawyer, it
3 is clear to me that Qwest seeks by this provision to preclude CLECs from recovering damages
4 for injuries or harms that may be remedied via self-executing penalties imposed pursuant to
5 wholesale service quality standards, performance assurance/post-entry performance plans, or
6 through the assertion of any and all other legal rights and remedies available to CLECs.
7

8 Moreover, this provision is unfair and discriminates against CLECs by requiring them to
9 give up in advance an entire category of damages caused by Qwest's breach of the SGAT.
10 Specifically, unlike the "damages" Qwest may sustain when a CLEC fails to make payments
11 under the SGAT, a CLEC incurs out of pocket losses, as well as damage to its reputation and
12 goodwill and lost profits, every time Qwest breaches its obligations under the SGAT.
13

14 **Section 18**

15 Section 18, which addresses the audit process, leaves a great deal to be desired.
16 Specifically, Qwest is the incumbent and bears the burden of proof in establishing that it has met
17 the statutory conditions for entry as well as any post-entry performance measurements. Under
18 no circumstances should a CLEC be under any obligation to pay for an audit that documents
19 Qwest's breach of the SGAT and/or relevant performance measurements. Moreover, there is
20 simply no reason to permit Qwest to object and/or deny a CLEC the right to select and retain the
21 third party auditor of its choice.
22

23 Other questions I have, and which are unanswered by Qwest's SGAT lite and its prefiled
24 testimony, include the method by which inconsistent CLEC and Qwest data will be reconciled;
25 whether a party may use the information compiled as a result of the audit in proceedings
26

1 involving Qwest performance issues; and the intent and purpose of Section 18.3 regarding party
2 affiliates.

3 **Q. WHY IS THE CICMP PROCESS RELEVANT TO THIS WORKSHOP?**

4 A. In the course of other workshops, a number of issues were identified which require some
5 form of change management. For example, a number of Qwest technical publications now
6 require modification as a result of changes to the SGAT. Qwest witnesses testified that the
7 CICMP process would be used to bring these documents into agreement with the SGAT and
8 proposed an open discussion of this process during the General Terms and Conditions workshop.
9

10
11 **Q. DOES THE PRE-FILED TESTIMONY OF QWEST WITNESS JAMES ALLEN
12 ADDRESS YOUR CONCERNS RELATIVE TO THE CICMP PROCESS?**

13 A. No, it doesn't. Mr. Allen's testimony and attachments do explain a great deal about
14 CICMP, but I am not assured that my SGAT issues will be adequately addressed by this process.
15 The concern expressed in earlier workshops was a need to have all technical publications,
16 product descriptions and other policy type documents brought into agreement with the SGAT,
17 using a process that includes both ILEC and CLEC oversight. Whereas the CCIMP process does
18 provide for CLEC involvement, I'm not certain that it provides sufficient opportunity to see that
19 our concerns are adequately addressed, as it is only a 30 day process.
20

21 **Q. WHAT OTHER CONCERNS DO YOU HAVE WITH THE CICMP PROCESS?**

22 A. I am very concerned that the appropriate CLEC subject matter experts are not becoming
23 involved in this process. The process calls for a single point of contact for each CLEC. In an
24 ideal world, this seems to be a logical approach. However, in the CLEC world, it just doesn't
25 work. Many newer CLECs, such as Covad, have high employee turnover and have not
26

1 developed stable processes that can assure the successful use of a single point of contact by
2 Qwest. This fact has been born out by Covad's minimal knowledge of, and involvement with
3 this process. Qwest must take all reasonable steps necessary to ensure that all CLECs have an
4 opportunity to participate in the CICMP process. At a minimum, all notices and documents
5 related to this process need to be electronically provided to the Covad Qwest ILEC Relations
6 contact for distribution to those in Covad who need to become involved.
7

8
9 **Q. HAVE THE TECHNICAL PUBLICATIONS DISCUSSED IN THE WORKSHOPS
COMPLETED THE CICMP PROCESS?**

10 A. Qwest did represent that this would be done, but I have no personal knowledge that it
11 was. I have also been unable to locate anyone at Covad who has any knowledge of these
12 technical publications having completed the CICMP process.
13

14 15 **XI. OTHER ISSUES**

16 **Q. PLEASE DISCUSS YOUR CONCERNS RELATING TO IMPROPERLY
REJECTED LSRs?**

17
18 A. The most critical concern relating to improperly rejected LSRs is the resulting delay in
19 our ability to provide service to our customers. This is the same basic issue discussed during the
20 collocation workshop dealing with improperly rejected collocation requests. Qwest conditions
21 processing of LSRs (SGAT 9.2.4.4) and collocation requests upon receiving a "complete and
22 accurate" request but fails to clearly state the meaning of "complete and accurate" in the SGAT.
23 This leaves the acceptance of the application totally at the discretion of Qwest.
24
25
26

1 **Q. WHAT DO YOU CONSIDER AN “IMPROPERLY REJECTED” LSR?**

2 A. I see two primary categories. The first would include all LSRs that were clearly
3 “complete and accurate” but were rejected by Qwest totally in error for reasons unknown to
4 Covad. The second category would include LSRs rejected for insignificant omissions or minor
5 errors that could have been easily corrected by a simple phone call.
6

7 **Q. ARE THESE IMPROPERLY REJECTED LSRs CAPTURED IN ANY**
8 **PERFORMANCE MEASURE?**

9 A. No. Performance Indicator Definition (PID) P04 captures rejected LSRs, however there
10 is no measure that captures data on the number of LSRs rejected incorrectly by Qwest.
11 Moreover, “rejected LSRs” – regardless of the basis for the rejection -- are excluded from the
12 data that feed the PIDs. This is a significant issue for Covad because our ability to provision
13 service to our customers in a timely manor is a core requirement for Covad to remain in business.
14

15 **Q. WHAT STEPS SHOULD BE TAKEN BY QWEST TO RESOLVE THIS**
16 **PROBLEM?**

17 A. First, a PID needs to be developed that will accurately measure these “improperly
18 rejected” LSRs. Next, Qwest and the CLECs must reach agreement on what constitutes a
19 “complete and accurate” LSR. Finally, Qwest must be willing to assist CLECs by resolving
20 minor LSR problems with a phone call, rather than requiring the costly and time consuming
21 process of re-submitting the LSR in its entirety.
22

23
24 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

25 A. Yes, it does.
26