Exhibit No. ____ (KMD-1T)

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

NON-CONFIDENTIAL
DIRECT TESTIMONY OF
MEGAN DOBERNECK

FILED ON BEHALF OF
COVAD COMMUNICATIONS COMPANY

Corrected Version
August 19, 2004

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I. QUALIFICATIONS

Q. MS. DOBERNECK, PLEASE IDENTIFY YOURSELF FOR THE COMMISSION.

A. My name is Megan Doberneck and I am employed by Covad Communications Company ("Covad") as the Vice President of External Affairs for the Qwest region. My business address is 7901 Lowry Boulevard, Denver, Colorado 80230.

Q. MS. DOBERNECK, PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR JOB RESPONSIBILITES AND EXPERIENCE.

A. As Vice President of External Affairs for the Qwest region, I am responsible for managing the business, regulatory, and legal relationship between Covad and its incumbent telephone company vendor, Qwest. I am responsible for ensuring resolution of business issues between the two companies, including driving resolution on operational, OSS, and billing problems, and negotiating with Qwest for the purpose of ensuring that Covad can pursue meaningful business opportunities in this market.

Covad is currently providing high speed internet access service using DSL technology in seven of the 14 Qwest states. Covad purchases commercial and unbundled network elements from Qwest to provide residential and business DSL services in those states. The team I manage interfaces with internal Covad groups dedicated to provisioning Covad service.

I hold a Bachelor of Arts degree, *magna cum laude*, from the University of California at Berkeley, with a major in Political Science. I also hold a Juris Doctor degree, with honors, from Columbia University School of Law in New York, New

York. Before joining Covad, I practiced law in Denver with the firm of Faegre & Benson, LLP. Prior to working at Faegre, I practiced law in Washington, D.C. with the firm of Akin, Gump, Strauss, Hauer & Feld LLP. I joined Covad in January 2001 as senior counsel for the Qwest region. In October 2002, I moved to my current assignment with responsibility for the Qwest region.

II. SUMMARY OF TESTIMONY

Q. PLEASE BRIEFLY SUMMARIZE YOUR TESTIMONY.

A. While Covad and Qwest have worked in good faith from language supplied by both Covad and Qwest to resolve the vast majority of issues raised during the negotiations, Covad and Qwest have been unable to come to agreement on all terms, particularly certain terms relating to copper retirement, Qwest's legal obligations relating to commingling and ratcheting, and billing. As I discuss below, all of Covad's proposals should be accepted by the Commission, including the requirements that (1) where copper is retired, Qwest ensure that Covad can continue to provide service to existing customers at no increase in price and no degradation of service quality; (2) Covad's interpretation of the combination, commingling, and ratcheting provisions in the Triennial Review Order ("TRO") be accepted by the Commission; and (3) Qwest comply with Covad's proposed billing time frames.

III. ARBITRATION ISSUES

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

Q. PLEASE PROVIDE SOME BACKGROUND ON THE COPPER RETIREMENT ISSUE.

A. Most homes and businesses in America are connected to the telephone network by a pair of twisted copper wires. This "last mile" connection is also called the local loop. In the simplest case, these loops connect a customer to a central office ("CO") where phone lines over a wide area are aggregated and the connection is made to the network backbone that delivers calls all over the world. This existing telephone network is truly ubiquitous – it reaches nearly every home and business in America and constitutes the quintessential bottleneck facility that cannot be replicated today on the same scale and scope at any cost. According to the FCC's ARMIS report, the book value of the total ILEC plant in service at the end of 2002 was over $388 billion. No company, not even the ILECs, could raise that kind of capital to duplicate an ubiquitous loop network.

Q. HOW DOES THIS PLAY INTO COVAD'S BUSINESS OF PROVIDING DSL SERVICE?

A. Digital subscriber line ("DSL") service works by breaking up data into chunks and sending these chunks through 4 kHz "channels" on the local loop at frequencies above that used for voice service. In the absence of placing cost-prohibitive equipment at a mid-point on the copper loop (i.e., remote DSLAMs), the entire span of the local loop from the CO to the end user must be copper if Covad wants to provide any form of DSL service.[1] In other words, if Covad cannot access a

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[1] Covad provides several different "flavors" of DSL – ADSL, SDSL, IDSL and T1 service.

local loop comprised completely of copper, then it cannot provide service to its end user customers.

Q. HASN'T IT ALWAYS BEEN THE CASE THAT COVAD HAS REQUIRED ACCESS TO AN ALL-COPPER LOOP?

A. No. Until the Federal Communications Commission ("FCC") issued its Triennial Review Order ("TRO"), Covad (or any other CLEC) could provide DSL service to end users over hybrid copper-fiber loops if a packet switching functionality – an ILEC DSLAM -- existed on that line. However, with the TRO, the FCC made an abrupt about-face, and ruled that CLECs no longer had unbundled access to any type of packet switching functionality placed by an ILEC on a hybrid copper-fiber loop. Further, the FCC also determined in the TRO that the ILECs were not required to provide unbundled access to hybrid copper-fiber loops, regardless of whether there is any type of ILEC packet-switching functionality on that loop. So, today, Covad can only provide its DSL service to customers over loops that are all copper from the end user's home or business to the serving central office.

Q. WHY IS COPPER RETIREMENT NOW SUCH A BIG ISSUE?

A. The answer to that question is two-fold. As I mentioned above, per the TRO, Covad can now only access the Qwest legacy copper network. And even as Covad's access to the phone network is strictly limited to the copper loop plant, the size of that copper network and the number of customers to whom we have access shrinks on a daily basis as Qwest and the other Bells modernize their networks by placing fiber.

Q. PLEASE PROVIDE MORE DETAIL AROUND THIS NETWORK MODERNIZATION.

A. Certainly. Fiber, or fiber-optic lines, are strands of high-quality glass that carry digital data by way of light signals. Because of cost, competitive pressures, and regulatory advantages, all of the ILECs, including Qwest, are upgrading their networks to replace copper with fiber.

With respect to the cost issue, while it is expensive to lay fiber, the maintenance costs for fiber cable are much lower than they are for copper, resulting in long-term cost savings once fiber and the associated equipment is in place. As for competitive issues, fiber optic lines provide a tremendous amount of bandwidth. Installing fiber allows Qwest to provide voice, data, and video services over a single loop. This capability allows Qwest to compete with the cable companies for virtually all the services cable customers generally subscribe to. As for the regulatory issues, as I discussed above, whenever Qwest replaces any or the entirety of a copper pipe with fiber, it does not have to provide access to competitors.

Q. COPPER RETIRMENT IS ALSO A CONSUMER ISSUE, ISN'T IT?

A. Absolutely. As I already mentioned, the size of the copper network to which Covad has access – and as a consequence the number of current and potential customers to whom we have access – is diminished daily. Looking at it from the perspective of new consumers looking for a service provider, they have no choice in providers where Qwest has retired copper and replaced it with fiber – the consumers' only option is to go with Qwest (or, perhaps, the incumbent cable company). And for consumers who have already opted to go with a competitor, when Qwest replaces copper with fiber, it forces that consumer to go with a provider that it does not and did not want as its service provider. Consequently, not only must the Commission decide how to manage copper retirement because of the impact on competitors, but also it faces an important policy decision of how it will protect and preserve consumer choice.

Q. IS COVAD'S ADVOCACY ON COPPER RETIRMENT DRIVEN BY ITS CONCERNS ABOUT OBTAINING NEW CUSTOMERS WHO HAVE FIBER IN THEIR LOOP AS WELL AS EXISTING CUSTOMERS WHO ARE IMPACTED BECAUSE THE COPPER ON THEIR EXISTING LOOP IS BEING REPLACED BY FIBER?

A. The sole issue we are addressing in this arbitration relative to copper retirement is how to address the impact on *existing* Covad customers whose copper loops are being replaced in whole or in part by fiber. In other words, the language we proposed, and which is provided below, is strictly limited to impacts on existing customers, and is designed solely to allow those customers to continue to receive Covad service at no increase in price or decrease in service quality until the customer chooses to disconnect his/her Covad service:

> 9.2.1.2.3.1 **Continuity of Service During Copper Retirement** - This section will govern the retirement of copper facilities which are serving CLEC-served End User Customers or CLEC at the time such retirement is implemented, to the exclusion of any other section of this Interconnection Agreement. Qwest shall adhere to all regulatory and legal requirements pertaining to changes in the Qwest network. Qwest will not retire copper facilities serving CLEC's End User Customers or CLEC, at any time prior to discontinuance by CLEC or CLEC's End User Customer of the service being provided by CLEC, without first provisioning an alternative service over any available, compatible facility (i.e. copper or fiber) to CLEC or CLEC End User Customer. Such alternative service shall be provisioned in a manner that does not degredate the service or increase the cost to CLEC or End User Customers of CLEC. Disputes over copper retirement shall be subject to the Dispute Resolution provisions of this Interconnection Agreement.

You can see very clearly from the language what is *not* Covad's position, and what we are *not* trying to do. Covad is *not* preventing or trying to prevent Qwest from undertaking routine network modifications or any fiber upgrades or copper retirement. Covad is *not* trying to force Qwest to keep copper or build copper where there is fiber placement. Covad is *not* trying to create a method or process for adding customers where apparently not permitted to do so per the TRO. The sole goal of Covad's proposed IA language and position on the copper retirement issue is to preserve Covad's existing customer base that might otherwise be impacted by copper retirement.

Q. PLEASE PROVIDE AN EXAMPLE OF HOW COVAD'S PROPOSED LANGUAGE WOULD OPERATE.

A. Sure. The concern, addressed by this issue, is limited in scope. The situation will only arise when Qwest finds it has a copper cable that has become a significant maintenance problem. It may be a 3600 pair feeder cable in Minnesota or Washington that consistently gets wet, year after year, during the rainy season. Or it may be a 4200 pair feeder in Arizona or New Mexico that has finally succumbed to many years of desert heat. These problems, brought on by the elements, ultimately result in significant customer service degradation and a constant increase in costs to Qwest for repair. In today's world, the final resolution is often replacement of the entire copper feeder cable with fiber and the placement of fiber fed digital loop carrier in the field. In these cases, the entire cable must be replaced, leaving no copper option for services currently in place. Under Qwest's proposed language, in the case where Covad DSL customers are currently being served by these copper facilities, the only option would be for Covad to disconnect the services of these customers. Under the Covad proposal, for the impacted customers – and let's say there are five -- those customers would continue to receive Covad service at no increase in cost or decrease in service quality until they choose to leave Covad.

Covad's proposal allows it to retain those existing customers and, importantly, it also preserves individual customer's choice in providers until that customer changes providers. This is a particularly important point, because that customer chose Covad and is not choosing to leave Covad at time of the copper retirement. The customer should not be forced to leave Covad – or any other DSL provider -- before s/he otherwise chooses to do so simply because of acts of Qwest over which neither the customer nor Covad have any control.

Q. DOESN'T THE USE OF GENERAL LANGUAGE LIKE "ALTERNATIVE SERVICE" CREATE SOME CONFUSION ABOUT THE COVAD PROPOSAL?

A. I don't know how it could. In the first place, Covad proposed this language several months ago. Presumably, had Qwest found it at all confusing, it would have told Covad so, and proceeded to ask some questions in order to eliminate that confusion. Instead, Qwest made no comment on the Covad language and, in fact, refused to discuss it at all. So, if there is any confusion whatsoever on Qwest's part [redacted]

A. We do, but had decided to use the "alternative service" language in order to provide Qwest with the greatest flexibility possible in working with Covad rather than forcing Qwest into providing one particular kind of service when another type of service would work just as well, if not better.

Notwithstanding our desire to provide Qwest with as much flexibility as possible, one service option that comes to my mind is one that Qwest already makes available on a volume basis. Specifically, Qwest has a product offering out, called the Qwest DSL Volume Plan Agreement --- or "VISP" service offering, which I have attached to my testimony as Exhibit KMD-2. With this product offering, a CLEC is able to provide broadband service to customers even where those customers are served from a remote terminal (i.e. a hybrid copper-fiber loop). Consequently, this is a product that most likely would meet Covad's service and product requirements (although not the pricing requirements, given the pricing contained in the VISP agreement), and which has already been developed, defined and implemented by Qwest.

Q. QWEST HAS COMPLAINED ELSEWHERE THAT THE COVAD PROPOSAL WILL FORCE QWEST TO INCUR SUBSTANTIAL, BUT COMPLETELY UNDEFINED AND UNQUANTIFIED COSTS. PLEASE RESPOND.

A. Absolutely. Qwest has raised concerns elsewhere that the Covad proposal would result in Qwest incurring costs far beyond what it reasonably could or should be required to bear. As an initial matter, while Qwest has made this claim quite loudly, it also admitted in the Colorado arbitration that it had made no attempt to quantify these costs or undertake any kind of study to accurately or even adequately capture what these costs are, or what the magnitude of such costs might be. In other words, while Qwest claims concern about costs, to date we haven't seen any evidence of them.

Qwest also claims that providing any kind of alternative service would result in Qwest sustaining additional costs in order to develop a product to meet Covad's needs. Of course, as I discuss above, Qwest offers and supports a product that very likely would meet Covad's needs (assuming the pricing conditions of no increase in cost to Covad or its end user customer are met) so such costs just wouldn't materialize.

Finally, Qwest claims that the Covad proposal would force Qwest to support the cost of maintaining two loops – the fiber feeder it has deployed as well as copper facilities to support Covad's "alternative service." That cost, however, would only be sustained by Qwest if it made an economically irrational decision. By this I mean that Qwest certainly could interpret its requirement to provide an alternative service as one that requires it to maintain copper loop plant that it otherwise would have retired. Conversely, of course, Qwest could interpret it in a number of other ways, which would meet Covad's needs and not require Qwest to maintain copper plant it otherwise would have retired. That choice is Qwest's, and it should not in any way be construed as a barrier to Qwest providing an alternative service where and when it retires fiber feeder.

Q. YOU DISCUSS FIBER FEEDER. WOULDN'T THE COPPER RETIREMENT ISSUE ALSO APPLY TO FIBER TO THE HOME ("FTTH") LOOPS?

A. In theory, it certainly would. However, I think that the much more likely scenario in which you would see copper retirement is the retirement of copper feeder and replacement with fiber feeder. And the reason that I think you will rarely see any type of copper replaced with an FTTH loop is simple economics. While it makes financial sense to replace copper feeder with fiber, as I discuss above, the same cannot be said about an all copper loop. Any kind of real deployment of FTTH loops is extraordinarily costly and it certainly seems clear from recent news articles that Qwest has no intention of deploying FTTH loops. Particularly when one factors in the line loss and revenue challenges Qwest faces going-forward, I believe it is very unlikely that Qwest will be deploying FTTH loops in the near future. My conviction is only reinforced by the facts surrounding Qwest's original FTTH attempt in Omaha, which proved to be wholly unsuccessful.

Q. WHY DOESN'T QWEST'S PROPOSAL ACHIEVE THE SAME OUTCOME THAT COVAD'S PROPOSAL ACCOMPLISHES?

A. If copper is retired and replaced with copper, then the Qwest proposal does work. But, with the more likely scenario – copper retirement and replacement with fiber – the Qwest proposal in Section 9.2.1.2.3.2 is completely untenable.

In order for a proposal to be a workable solution, a carrier must *realistically* be able to implement the proposal. Qwest claims that Covad can collocate a remote DSLAM to serve the handful of customers that would be impacted by the retirement of copper and replacement with fiber. That is ludicrous. Qwest provided testimony in the Minnesota cost case[2] which purported

[2] Testimony of Georgeanne Weidenbach, Docket No. P-421/CI-01-1375, OAH Docket No. 12-2500-14490-2 (dated February 2, 2002).

to show that it costs $90,000 to collocate a DSLAM at the point where the fiber and copper meet. This estimate doesn't even include other real and significant costs such as: (1) any of the recurring costs to use any of the remote DSLAM network elements; or (2) any of the costs to provision DSL loops served by such remote DSLAMs. It is also unclear how Covad would get the service back to the central office from the remote DSLAM. Given the obvious expense involved with attempting to serve a handful of customers, Covad could not continue to provide service without increasing by an enormous amount the rates those customers pay. Needless to say, given the anticipated size of those rate increases, those customers would be forced to change carriers even though they did not want to do so.

What we have here, then, is an illusory solution whereby Covad would spend about $20,000 per customer just to provide service for about two more years. No telecommunications provider, incumbent or otherwise, can afford to waste capital in such a way. It is the concentration of existing customers that allows incumbents such as Qwest to invest in remote DSLAMs (and even this investment is limited). Neither Covad, nor any other CLEC, can expect to achieve that level of market share.

Furthermore, there are other reasons that the economics of the situation are far different from Qwest than they would be for Covad. First, Qwest would not only be able to allocate the cost of a remote DSLAM to its existing customers, but also it could allocate those costs over new customer lines as well. Because, under the TRO, Covad is not permitted to add new customers where that customer's loop is hybrid fiber/copper, it cannot – which is reflected in the Covad proposal. Therefore, the entirety of Covad's cost would be distributed only to the handful of impacted customers. Second, Qwest can provide an array of services – voice, data, and video – to which it can allocate costs. By contrast, Covad would be providing only one service – DSL – to which the entirety of the cost in the form of increased rates would have to be allocated.

Q. YOU DISCUSS REMOTE COLLOCATION ABOVE. WHAT HAPPENS TO COVAD'S CENTRAL OFFICE-BASED COLLOCATION EQUIPMENT WHEN QWEST DEPLOYS FIBER?

A. As more and more fiber feeder replaces copper, fewer and fewer potential customers will be in reach of Covad's central office based DSL, which will result in the progressive stranding of Covad's collocated investment. This is not an inconsequential point. Today, in order to collocate in a single Washington central office, Covad incurs between *** BEGIN CONFIDENTIAL [redacted] END CONFIDENTIAL *** in non-recurring collocation costs and approximately *** BEGIN CONFIDENTIAL [redacted] END CONFIDENTIAL *** per month in MRCs.[3] In addition, Covad will lose the benefit of the investment it made in placing its equipment in the CO to the tune of, on average, *** BEGIN CONFIDENTIAL $[redacted] END CONFIDENTIAL *** Additionally, Covad has ordered and paid for transport (approximately *** BEGIN CONFIDENTIAL [redacted] END CONFIDENTIAL *** and an average of *** BEGIN CONFIDENTIAL [redacted] END CONFIDENTIAL *** per DS3 MRC) and UNEs to provide

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[3] These are the current, commission-approved rates and the rates that Covad has received for over the past year when submitting collocation applications. These rates include special pricing via the Collocation Available Inventory Promotion.

service to those customers, all of which Covad will ultimately lose under the Qwest proposal.

Covad is not passively sitting around waiting for Qwest to force customers off of our network and to result in a stranding of our central office-based collocation spaces and equipment. To the contrary, Covad is working to develop alternative ways to provide service to our customers. Notwithstanding these efforts, it is not appropriate for Qwest to have the unilateral ability to disconnect existing Covad customers under the guise of technological development.

At the end of the day, while Qwest may complain about its supposed investment disincentive (which, as I discuss below, is an illusory concern), it is Covad that suffers the monetary harm because it loses the value of its central office investment.

Q. IN DESCRIBING THE COVAD PROPOSAL IN ACTION, YOU STATED THAT ONLY A HANDFUL OF CUSTOMERS WOULD BE IMPACTED. HOW DO YOU ARRIVE AT THAT CONCLUSION?

A. By two different methods. First, Qwest is and has been replacing copper with fiber. To date, those activities have not impacted Covad so we reasonably assume that the impact will not be huge, just that there will be some impact. The second way I arrive at that conclusion is based on our experience in other ILEC regions. In the BellSouth region, which is of comparable size in terms of Covad's customer base to the Qwest region, *** BEGIN CONFIDENTIAL [redacted] END CONFIDENTIAL *** Covad customers have been impacted by copper retirement with fiber replacement. Notably, BellSouth has been far more aggressive than Qwest in replacing copper with fiber, and more than 40% of the BellSouth remote terminals are served by fiber – whereas it appears that only approximately 20% of Qwest's remote terminals are served by fiber. Importantly, Covad filed copper retirement complaints in each of the BellSouth states where customers were impacted, and was able to successfully settle those complaints in a fashion that allowed those customers to continue to receive the same service they were receiving before the retirement.[4]

Q. IF IT IS ONLY A HANDFUL OF CUSTOMERS, WHY SHOULD THE COMMISSION OR COVAD CARE ABOUT THESE CUSTOMERS?

A. While four or five customers may be something Qwest is willing to ignore, Covad most certainly is not. Covad is committed to delivering to each and every one of its end users outstanding service. Covad's commitment is not just to provide the service that the end user wants, but also to ensure that the end user's entire experience with Covad, from ordering through disconnection, is a positive experience and that the end users get what they want – excellent service *from Covad*. Because of its commitment to service and end user satisfaction, Covad does not just dismiss the predicament of a few customers because they are just a few.

The Commission, too, does not ignore the predicament of a few consumers just because there are a few rather than hundreds or thousands. If anything, the Commission has evinced an overwhelming interest in making sure that each and every consumer in Washington is treated with respect and that providers over whom the Commission exercises authority are responsive to their customers. Just because only a few consumers may be impacted does not mean that they do not deserve to have choices. To suggest otherwise is simply repugnant. If anything,

[4] The precise terms of the settlements are confidential. However, Covad is permitted to disclose the fact that the complaints were settled successfully and that, as a result of the settlement, the customers continued to receive the same services they were receiving prior to the copper retirement.

it is where only a few of the "little guys" are impacted that customer choice is most important.

Q. DOES THE COVAD PROPOSAL DISINCENT COVAD FROM INVESTING IN ITS OWN NETWORK?

A. No, it doesn't. As the Commission knows, Covad is a facilities-based provider. As of August 2001, Covad had invested over $1.4 billion to build out its nationwide network, and since that time Covad has spent tens of millions of dollars more to maintain and upgrade its already world-class network and operating support systems ("OSS"). Covad collocates its own equipment in numerous Qwest central offices in Washington and throughout six other states in the Qwest region (Covad is Qwest's largest collocation customer). Covad relies solely on its own equipment and network to provide service to customers in Washington, except when it must utilize dedicated interoffice transport leased from Qwest in some circumstances and as well as that quintessential bottleneck facility, the local loop. Because of its business plan, Covad utilizes its own network wherever and whenever the technological and economic circumstances make it possible. But, because it makes no sense to invest in a remote DSLAM simply to serve a handful of customers for a limited time period, Covad would not make that investment decision.

Q. QWEST HAS SUGGESTED ELSEWHERE THAT COVAD'S PROPOSAL WOULD REDUCE QWEST'S INCENTIVE TO DEPLOY FIBER FACILITIES. DO YOU AGREE WITH THIS STATEMENT?

A. Absolutely not. The potential impact to Qwest, should Covad prevail on this issue, would be so minimal that any possibility of impacting a multi-million dollar investment decision is overstated, if not unfounded.

Q. PLEASE EXPLAIN.

A. Covad is primarily a wholesale provider of DSL services. Our business partners, who provide the retail service, have a nationwide marketing focus. At times, the focus may be at a state level, but never at a wire center or neighborhood level (the neighborhood level is referred to by telecom providers as a distribution area, or DA). Because of this fact, many DAs will have few, if any, end user customers with Covad DSL service. Our customer base is not concentrated in any one DA, but instead, randomly distributed over all DAs served by wire centers where Covad is collocated. The likelihood of more than a handful of Covad end user customers being impacted by a fiber replacement is so highly remote that any attempt to argue that multi-million dollar investment decision would be made on this basis is suspect in my mind.

Q. IF FIVE COVAD END USER CUSTOMERS WERE GOING TO BE IMPACTED BY A FIBER REPLACEMENT PROJECT, WHAT WOULD BE THE APPROXIMATE FINANCIAL IMPACT TO QWEST?

A. Assuming an industry average churn rate (the length of time a typical customer retains their DSL service) of two years, the difference in price between Qwest wholesale and retail revenue is about $100.00 per month for all 5 customers, the impact would be about $2,400.00. This is hardly enough to impact a decision as to whether or not to deploy fiber to hundreds, if not thousands, of existing Qwest customers.

Q. CAN YOU SEE ANY POSSIBLE WAY THAT COVAD'S PROPOSAL WOULD REDUCE QWEST'S INCENTIVE TO DEPLOY FIBER?

A. Not in the least. Again, Covad's customers are so widely dispersed within the Qwest network that impacts will be minimal, and certainly not significant enough to discourage Qwest from deploying fiber cable. If Covad were a retail provider of DSL, with established relationships with customers within a specific neighborhood, higher concentrations of customers would be more likely. However, unlike Qwest or the incumbent cable provider, Covad is not provided this opportunity to target market to a specific neighborhood customer base.

Moreover, as I discussed above, I can envision at least one way in which Qwest could provide an alternative service over any of the facilities available to an existing Covad end user customer that would not change in any respect Qwest's investment calculation or result in Qwest incurring any costs over and above what it would otherwise incur when it decided to retire copper feeder and replace it with fiber. Nor would this method (the VISP product) require Qwest to maintain copper it would not otherwise maintain, or provide any type of access to fiber facility beyond that required to provide service to existing Covad customers until they choose to disconnect their service. Of course, notwithstanding what I can envision, Covad will commit to working with Qwest to developing an alternative service for Covad's impacted existing customers that will not increase Qwest's costs beyond the costs it would otherwise incur in deploying fiber feeder and the associated electronics in the first place.

Q. EXPLAIN WHY COVAD'S PROPOSAL ACTUALLY BENEFITS QWEST.

A. Under Covad's proposal, Qwest continues to receive revenue from Covad as it continues to provide service to the customer. If Covad is not allowed to retain that customer, then Qwest is not assured of any revenue whatsoever from that customer. In other words, if Qwest forces Covad to cut off service to its customer, the customer then has the option of choosing Qwest for its broadband (and video) service, or choosing the cable company for broadband (and video) service. The customer is free to choose the cable company, and if he or she does so, Qwest will receive no revenue whatsoever. At least under Covad's proposal, Qwest will continue to recover its costs and make a reasonable profit without any additional expenses.

Q. PLEASE EXPLAIN WHY THE DEPLOYMENT OF FIBER DOES NOT LEAD TO ANY CONSUMER BENEFIT IN THE COPPER RETIREMENT SCENARIO WITH WHICH COVAD IS CONCERNED.

A. Fiber deployment does not necessarily result in any meaningful consumer benefit. In the first place, we are not talking about a situation in which the consumer does not already have broadband. To the contrary, in the copper retirement scenario we are talking about, the consumer already has broadband. The deployment of fiber thus doesn't result in any bridging of the "digital divide" since none exists in the scenario Covad is concerned about. This is an important point because, historically, the desire to incent broadband deployment (whether via copper or fiber) has been driven by the desire to provide all consumers with access to broadband. That traditional justification for creating a deployment incentive simply does not exist here. The consumer already has broadband from a provider of their choice. And at heart, the only difference between the Qwest and Covad service offerings in the copper retirement scenario we are discussing here is whether the consumer also wants to receive video services from Qwest. While a consumer may make the value judgment that they prefer broadband and video from Qwest over just broadband from Covad, I do not believe that access to a non-essential form of entertainment qualifies as a consumer benefit, at least not in the sense of a consumer welfare benefit.

Second, the deployment of fiber, if Covad's proposal is not adopted, will actually lead to consumer harm. The consumer has made his or her choice among providers and currently available service options. The choice to go with Covad should be honored until the consumer changes his or her mind, just as, if the consumer chooses to leave Covad because of additional options or features (i.e. video) available to him or her from Qwest as a result of its fiber deployment, then that choice should be honored as well. Relatedly, of course, as consumers have fewer providers to choose from, their rates will go up as a result of the monopoly/duopoly service arrangement. At least under Covad's proposal, the consumer won't face an immediate jacking up of the price of the service he or she receives, because they have an alternative, lower-priced, and excellent service option in Covad.

Q. DO YOU TAKE ISSUE WITH QWEST'S COPPER RETIREMENT NOTICE PROCESS?

A. It is clear to us that Qwest's notice process is deficient.

Q. WHY IS THE QWEST NOTICE PROCESS DEFICIENT?

A. As I understand it, Qwest will not actually provide notice to the carrier whose customer base will be impacted. Instead, Qwest is relying on some posting on its website. For such a customer impacting process to actually work, carriers should be notified individually and directly of any impact to their existing customer base, just as BellSouth does today. The mere posting of a notice on the Qwest website is wholly insufficient, because it places the burden on the CLEC to check daily to see whether Qwest will force the disconnection of Covad's customers. And because BellSouth can provide such direct and individual notices, Qwest presumably is likewise capable of providing that same type of direct notice.

Q. THE COVAD PROPOSAL IS CONSISTENT WITH THE TRO, CORRECT?

A. It is. The FCC's stated pre-condition for the right of an ILEC to retire copper is that any such retirement must not deny competitors access to loop facilities:

> **Unless the copper retirement scenario suggests that competitors will be denied access to the loop facilities required under our rules**, we will deem all such oppositions denied unless the Commission rules otherwise upon the specific circumstances of the case at issue within 90 days of the Commission's public notice of the intended retirement.[5]

In other words, there are two methods by which the FCC intended to prevent copper retirement. First, if the retirement will deny access to loop facilities as required by the FCC's rules (xDSL capable loops meet these criteria), then the ILEC may not use the copper retirement provisions of the *Triennial Review Order* at all. Second, the FCC may issue a ruling with respect to any objections filed within the ninety-day period, in which case an ILEC "may not retire those copper loops or copper subloops at issue for replacement with fiber-to-the-home loops."

[5] TRO, ¶ 282 (emphasis added).

The fact that the FCC was intent on precluding ILECs from retiring copper where such activity would negatively impact a CLEC's service to customers was reiterated by the FCC:

> We note that, with respect to network modifications that involve copper loop retirements, the rules we adopt herein differ in two respects from the notification rules that apply to other types of network modifications. **First, we establish a right for parties to object to the incumbent LEC's proposed retirement of its copper loops for both short-term and long-term notifications as outlined in Part 51 of the Commission's rules. By contrast, our disclosure rules for other network modifications permit oppositions only for instances involving short-term notifications.**[6]

The FCC's intent to protect xDSL capable loops in particular becomes clearer when read alongside the FCC's requirements for narrowband access to fiber loops. Because the FCC had already alleviated any concern regarding narrowband services by establishing specific access requirements for the provision of narrowband services by CLECs over newly deployed fiber loops,[7] the FCC could only have been referring to broadband services, including xDSL capable loops, when it discussed the "denial of access to loop facilities required under our rules."

Additionally, with respect to the notification requirement, the FCC was very clear that notification must be given so that when copper is retired, "incumbent and competitive LECs can work together to ensure the competitive LECs maintain access to loop facilities."[8] The interest in ensuring coordination of service to alternative facilities only makes sense if the FCC wanted to make sure that CLECs continued to have access to loop facilities in order to provide service to their existing customer base.

It should also be noted that this Commission long ago established a specific obligation for incumbent carriers to provide unbundled access to loops, noting that

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[6] TRO, ¶ 283 (emphasis added).
[7] *See Triennial Review Order,* ¶¶ 296-297; 47 C.F.R. § 51.319(a)(2)(iii).
[8] TRO, ¶ 281.

such access is "in the public interest" and "essential" to competition.[9] Any copper retirement activity that eliminates access to unbundled loops, such as Qwest's proposal, is contrary to longstanding Commission policy and findings and should be rejected.

ISSUE 3: <u>SHOULD QWEST BE REQUIRED TO FOLLOW THE FCC'S DIRECTIVES REGARDING THE COMMINGLING OF FACILITIES, COMBINATION OF UNEs, AND RATCHETING ESTABLISHED IN THE TRO?</u>

Q. PLEASE DESCRIBE THIS ISSUE.

A. This issue is a legal issue and because I am not testifying as an expert on legal issues in this arbitration, I will simply state that the dispute between the parties centers around the proper interpretation and application of the TRO provisions addressing UNE combinations, commingling, and ratcheting.[10] It is my understanding and expectation that this issue is best and properly addressed in briefing by the parties following the hearings in this matter.

ISSUE 9: <u>TIME FRAME FOR PAYMENT OF BILLS, DISCONTINUANCE OF ORDERING, AND DISCONNECTION OF SERVICE</u>

Q. PLEASE PROVIDE THE CONTEXT FOR THESE ISSUES.

A. The issues themselves are not complex, and the parties' disagreement centers solely on timing. In a nutshell, the questions are whether (1) CLECs are allowed 45 days from the bill date to pay their bills (as opposed to 30 days); and (2)

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[9] Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints in Part, in Docket No. UT-94464 (October 31, 1996), page 50 ("The record clearly establishes that unbundling of the local loop is essential to the rapid geographic dispersion of competitive benefits to consumers and is in the public interest. Unbundling allows customers greater opportunity to choose between a diversity of products, services, and companies. Unbundling also allows for efficient use of the public switched network, reduces the likelihood of inefficient network over-building, and ensures that competition is not held hostage by being bundled with bottleneck functions.").

[10] The particular sections of the TRO that address the UNE combinations, commingling, and ratcheting issues (including issues related to EELs) are ¶¶ 135, 569-629, 655, and fn 1990.

whether Qwest must wait 90 days after the payment date before an account is considered delinquent and, by extension can discontinue processing orders or disconnection services (as opposed to 30 days).

Q. WHY DO THE PARTIES DISAGREE ON THE TIMING ISSUE?

A. Timing is a critical issue when it comes to bill review. Regardless of what the ultimate time frame is, Covad has a limited amount of time to review a bill, determine whether to dispute any portion of that bill, and pay any undisputed amounts owed. Importantly, a Covad failure to adhere to the billing timelines has significant and negative consequences:

- Failure to pay on time places a carrier at risk of incurring late payment charges. Late payment charges can result in significant costs to Covad;
- Failure to pay on time places a carrier at risk of having to provide a deposit, which Qwest estimates the deposit to equal charges for a two-month period; and
- Failure to pay on time can result in discontinuance of processing orders and disconnection of service.

Q. WHY DOESN'T COVAD JUST PAY THE ENTIRETY OF A BILL AND DEAL WITH ANY BILLING ERRORS LATER?

A. A practice of "pay all and worry about disputes and overpayments later" is just not an acceptable response or solution. First, it is money out of Covad's pocket and Covad is deprived of having that money available to it for other uses. Given the current economic environment and known constraints under which Covad is operating in light of significant regulatory uncertainty, access to ready capital is key.

Second, if Covad pays prematurely, it loses the benefit of any interest that would accrue on those funds, which of course is important from Covad's financial perspective. By contrast, Qwest benefits unfairly because it accrues interest for amounts it never should have received in the first place. Ultimately, the "pay now and deal later" mode of business would result in a game of "catch up" by Covad, as it does a post-hoc review in an abbreviated time frame to ensure that its billing claims are not precluded by other provisions of the Agreement.

Finally, and perhaps most importantly, Covad loses its sole form of leverage when it simply pays a bill. In theory, the parties are equal partners, one ordering services for which it pays, and the other providing them. In reality, however, the party providing the services, Qwest, is the only source for services that Covad cannot get anywhere else. So, when Covad pays a bill and then tries to dispute a particular billed item, it has lost any leverage it might otherwise have because it cannot takes its business to another vendor if the outcome of the billing dispute is not handled in an acceptable fashion. No number of provisions in the interconnection agreement can change that essential fact.

Q. PLEASE EXPLAIN WHY THE TIME FRAMES PROPOSED BY QWEST ARE PROBLEMATIC AND UNREASONABLE.

A. Generally speaking, Covad receives its UNE, collocation, and transport bills from Qwest 5-8 days after the invoice date. Under Qwest's proposal, Covad has 20 days at worst, or 25 days at best, to review all of those bills. This bill review is not an easy task. Covad's UNE bills fill 30 boxes every month. Collocation bills, of which Covad receives ten (10) every month from Qwest, run from 50-70 pages long, for a total of 500-700 pages worth of collocation billing. Transport bills, of which Covad receives 17-18 every month from Qwest, also run from 50-70 pages, for a total of 850-1260 pages worth of transport billing. Monthly bill review, therefore, involves the review and evaluation of thousands and thousands of pages of billings.

Q. QWEST SUGGESTS THAT, BECAUSE ITS BILLS ARE AVAILABLE ELECTRONICALLY, BILL REVIEW IS FAIRLY SIMPLE.

A. Electronic billing does not make the burden of bill review so easy that the time frames proposed by Qwest do not impose a burden on Covad. Additionally, not all of the Qwest bills are available electronically. The nonrecurring portion of collocation bills for new collocation spaces or augments are not available in electronic format, and are only available in paper format such that the entire non-recurring bill review process is manual. Covad employees must review each charge from the paper invoice, load it manually into the billing system, wait for an exception printout, and then manually evaluate exceptions. Covad employees also must manually validate that the elements and quantities reflected in the invoices are correct and accurate. Additionally, any ICB – individual case basis -- charges on a collocation bill – of which there can be many,[11] must be reviewed individually by Covad employees.

Transport bills, while provided electronically, also require manual review of portions to confirm non-recurring charges. Additionally, because of the method by which transport is billed (variable recurring and fixed recurring), the variable recurring charges must be manually validated each and every month.

UNE bills, while provided electronically, can be extremely difficult to process in the time frames Qwest wants included in the Agreement. First, a number of times, the Qwest UNE bills fail to provide a circuit identification

[11] Some examples of ICB charges are as follows: Construction Charges, Central Office Security Infrastructure Charge, Cageless Collocation Site Preparation Fee, Line Sharing Reclassification Charge, Expedite Charge and Cancellation Charge.

number, providing instead the customer's billing telephone number (i.e., the telephone number that Qwest would call about a billing problem, rather than the telephone number associated with the actual circuit). In the absence of a circuit identification number, however, Covad is utterly unable to confirm whether Qwest is billing Covad for a loop it has actually ordered. The scope of this problem is enormous. In the first five months of 2004 alone, Qwest billed Covad over *** BEGIN CONFIDENTIAL [redacted] END CONFIDENTIAL *** for loops for which no circuit ID was provided. On an annualized basis, the total amount that Qwest bills and which Covad must simply pay, having no way to validate the veracity of the billing, is *** BEGIN CONFIDENTIAL [redacted] END CONFIDENTIAL *** In the absence of additional time to resolve the circuit ID issue, Covad must simply pay these charges.

Second, a number of times the Qwest UNE bills fail to contain USOCs (universal service ordering codes). For example, if an installation option other than basic installation is charged, Covad has to determine what installation option was charged for, (as often a USOC is not provided) and if the charge was accurate. When this happens, Covad must go back to Qwest to get the appropriate USOCs for each line item charged. Only after Qwest provides that key information can Covad begin to validate billing. Similarly, all "episodic" non-recurring charges must be investigated manually because Qwest does not provide USOCs for those types of charges. For instance, if Qwest bills for labor and repair charges on a trouble ticket, Covad must first determine what the charge is for, and then manually review the order or repair history for a particular UNE to determine if the charge is valid.

Third, the applicable rate (whether non-recurring or recurring) charged by Qwest on UNE bills may be incorrect. Even more problematic, Qwest may bill the correct monthly recurring charges, but Covad must nonetheless undertake a manual review of the rate because the USOC is the same even though the rate may differ. For example, in Washington there are five different zones with four different monthly recurring charges ("MRCs") for UNE loops. Each DS0 loop MRC is different for each zone, but the USOC for all zones is identical. Consequently, additional time is spent tracking down appropriate rates for the UNEs billed by Qwest.

Fourth, all disconnects must be researched manually and individually to make sure that the date on the disconnect is correct. This must be done to ensure that Qwest does not bill for an entire month for a circuit that was disconnected on day 1, day 7, day 22, etc. of the particular billing cycle. Given current churn rates, Covad must manually investigate ****** BEGIN CONFIDENTAL** [redacted] **END CONFIDENTIAL ****** every month.

Finally, as Covad partners more aggressively with other CLECs to provide line split or loop split services, billing will become significantly more difficult. As agreed upon by the parties, there is only one customer of record ("COR") for line split and loop split orders.[12] The COR receives all billings for the line split or loop split order, including all the voice and the data charges. However, in both line splitting and loop splitting situations, you have two CLECs involved – one CLEC providing the voice and the other providing the data. So, if Covad is the COR, it will receive all of the voice billings, which it will have to send over to its voice

[12] Qwest's Washington Statement of Generally Available Terms (SGAT), 8th Revision, Section 9.21.1.

CLEC partner, await its review of the voice portion of the billing, resolve any questions between the CLECs as to questions about the billings, and then incorporate any billing disputes as appropriate. Needless to say, this adds time and complication to the bill review process that Qwest's proposed time frames simply do not accommodate.

Q. YOU'VE IDENTIFIED A NUMBER OF PROBLEMS. WHAT IS THE MAGNITUDE OF THOSE PROBLEMS?

A. Unfortunately, it is significant. Performance measures such as the PIDs measure and document performance problems. BI-3A (Billing Accuracy – Adjustments for Errors) measures billing accuracy for resale and unbundled network elements (UNEs). The measure reports billing accuracy as the percentage of total amount billed that was not adjusted for Qwest billing errors. For example, if Qwest billed a CLEC a total of $100,000 across all of its resale and UNE invoices in February and Qwest adjusted the CLEC's February invoices for $5,000 of billing errors that Qwest made on earlier bills, Qwest would report 95% performance in February.

The PAPs in Qwest's region have included BI-3A with a per measure cap of $5,000/month. Thus, no matter how poor Qwest's billing is in a particular month, Qwest's liability is generally limited to $5,000.[13] Even with such stringent caps in place, Qwest has acknowledged making significant billing errors in its reporting under BI-3A. The dollar value of these errors, even without the inclusion of billing errors not currently included in the measure (such as collocation billing errors), are quite troubling on their face. Qwest has reported results for BI-3A since April 2001. Over the three years since, Qwest has made

[13] Two PAPs (Minnesota and Colorado) have severity escalations. Under these PAPs, extremely poor Qwest billing in one month could result in as much as a three-fold multiplier of the base PAP payment. The Minnesota Wholesale Service Quality Standards, which also include BI-3A, have a similar severity escalation; however, the payment cap for BI-3A is $10,000/month.

and corrected over $112 million dollars of billing errors. And for Covad specifically, in just about a year and a half, Qwest has paid to Covad *** BEGIN CONFIDENTIAL [redacted] END CONFIDENTIAL *** because of billing errors, which reflect hundreds of thousands of dollars of amounts billed in error. Keep in mind that this issue is not just a Covad issue, but one of importance to the industry. As the FCC has made clear, accurate and timely wholesale billing is critical to the ability of CLECs to effectively compete:

> Inaccurate or untimely wholesale bills can impede a competitive LEC's ability to compete in many ways. First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from an incumbent LEC.[14]

Q. HAS COVAD ATTEMPTED TO REMEDY THE DEFICIENCIES IN QWEST'S BILLS THAT YOU HAVE IDENTIFIED?

A. Yes, we have. Our request for an extension of the payment time frames is basically a last resort. Our preference, by far, would be to receive bills that did not contain these Qwest generated deficiencies; and to receive bills that we could confidently, completely, and accurately review in a thirty day time frame.

[14] Memorandum Opinion and Order, *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC 01-138, (September 19, 2001) at ¶ 23 (footnotes omitted).

However, that is not possible today. For each and every one of the problems I have identified here, Covad has raised it either with Qwest billing personnel or through change management. And, as of the filing date of this testimony, with the exception of the USOCs for one time or episodic non-recurring charges, Qwest has been unable to commit to any improvement or correction of the deficiencies and/or errors in the bills it produces.[15]

This inability to correct the deficiencies/errors in its bills is nowhere more true than with the circuit ID billing issue. Qwest stated in the Colorado arbitration that Covad had only first raised the circuit identification issue in change management at the May 2004 meeting. That is not accurate. Covad first raised the *billing* circuit identification issue in March of 2003 with Qwest billing personnel. Covad was told at that time that, due to system limitations, no circuit identification information could be provided on Covad's bills. This issue, relating to the use of the circuit ID in the UNE bills, is completely separate and different than the *provisioning* circuit ID issue that was raised by Covad in the May 2004 CMP meeting. The *provisioning* circuit ID issue relates to the way Qwest manages the provisioning of moved/migrated shared line services. Consequently, the May 2004 Covad CMP change request addresses provisioning problems, which are driven by different databases and systems than those involved in UNE bill generation. Resolution, if any, on that CR will not impact or correct Qwest's inability to provide a circuit ID for billing purposes on the Covad UNE bills.

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[15] With respect to the non-recurring USOC issue, it is important to note that Qwest has already pushed out once the implementation of the fix that should correct this particular billing problem. Originally, Qwest had committed to implementing the USOC change in June of 2004. Via unilateral notification, Qwest announced that it would not implement this change until December 2004. Like the single LSR issue discussed by Mr. Zulevic in his testimony, I am concerned that Qwest will continue to push out its "commitments," rather than use its resources to benefit its wholesale customers.

Q. QWEST CLAIMS THAT, DESPITE COVAD'S STELLAR PAYMENT RECORD, IT MUST ALSO TAKE INTO ACCOUNT OTHER CLECS WHEN EVALUATING WHETHER TO AGREE TO A PROPOSED TIME FRAME. PLEASE RESPOND.

A. Qwest has discussed the problems of large uncollected balances with other CLECs as what appears to be its primary justification for its refusal to extend the billing time frames with Covad. Two facts are pertinent to Qwest's justification, and both demonstrate that the payment history of other CLECs is irrelevant here.

First, the large receivables Qwest complains about resulted from Qwest ignoring the current 30 day time frame and *voluntarily* extending payment time frames for the CLECs at issue. Thus, even the most stringent of billing time frames, and those that Qwest is advocating here, fail to protect it from the problems it identified.

Second, because the FCC eliminated "pick and choose" (the ability to pick and choose terms from an approved interconnection agreement) and now requires a CLEC to opt into the entirety of any interconnection agreement, Qwest's apparent primary concern about pick and choose is no longer a factor. Importantly, Covad has agreed to a number of other billing provisions, such as Section 5.4.5, which require a deposit when a CLEC has not demonstrated a satisfactory payment history like Covad's. Provisions like this will provide Qwest with ample protection if another CLEC opts into the entirety of the Covad interconnection agreement.

Q. EXPLAIN WHY THE QWEST PROPOSED TIME FRAMES FOR DISCONTINUANCE OF ORDER PROCESSING AND DISCONNECTION OF SERVICE ARE LIKEWISE UNREASONABLE.

A. Before I do that, it is important to know that Covad does not disagree at all with the principle that, if Covad fails to pay Qwest, then Qwest should have a remedy. Where the parties disagree is at what point Qwest should be able to invoke what are, indisputably, draconian rights. The parties basically differ by a span of 60 days. Covad's proposals give it 60 more calendar days than the Qwest proposals before Qwest can "pull the plug" on ordering and services, as well as when Covad may be considered repeatedly delinquent. When it deems a CLEC repeatedly delinquent, Qwest may charge Covad a compounded late charge penalty for disputed amounts and demand a deposit from Covad in the amount of two-months worth of charges. In addition, in order for Covad to reconnect a circuit that has been "pulled," Covad would have to pay a reconnect charge to Qwest.

It is critical to understand that these provisions give to Qwest the power to destroy, if it so chooses, Covad's business in the state of Washington. There is no way for Covad to recover from any wide-spread or extended cessation of its ability to place orders or from any kind of wide-spread disconnection of its existing customers. That kind of disruption to a company's business can be fatal, and there is no amount of money that can compensate Covad for that kind of disruption -- not that such money would be available, given the limitations on liability in the agreement to be approved that are not disputed between the parties. While Qwest has every right to be concerned about receiving payment to which it is legitimately entitled, that concern pales in comparison to Covad's concern about protecting the viability of its business in the event of a billing dispute.

Q. DOES QWEST HAVE ANY BASIS TO BE CONCERNED ABOUT A LACK OF PAYMENT BY COVAD?

A. I don't think so. Qwest talks only in the abstract about what is right or wrong. I am unaware of any evidence that Qwest seeks its proposed billing time frames and the associated discontinuance and disconnection protections because Covad fails to pay undisputed amounts on time or because Qwest has encountered problems with Covad with respect to disputation of bills in order to avoid paying bills on time. To the contrary, having worked closely with both Qwest and Covad billing personnel over the past 20 months, it is my understanding that Qwest is very pleased with our billing relationship. That being said, the current time frames under which Covad operates place a significant burden on it, and Covad believes that the short extension of time it requests is more than reasonable.

Q. IF THE BILLING PROCESS IS GOING FAIRLY SMOOTHLY, WHY DOES COVAD SEEK A LONGER TIME PERIOD BEFORE QWEST CAN DISCONTINUE PROCESSING ORDERS AND/OR DISCONNECT SERVICES?

A. While Covad pays its bills on time, the billing time frames it currently operates under necessarily cause it to "skimp" on its bill review, which is just not an acceptable result. Equally important, Covad's request is grounded in how Qwest handles disputed billing claims – i.e., whether it considers a claim to be disputed -- and how it can take several months to have Qwest acknowledge, much less resolve, billing disputes. A perfect example of this is Covad's dispute of DS3 UDIT billing in the state of Arizona. In June of 2002, the Arizona Commission ("ACC") approved permanent rates for Qwest's dedicated interoffice transport product – or UDIT -- (the "permanent" rates). In December 2002, ACC Staff and CLECs alerted the Commission that the rates approved for UDIT – both DS1 and DS3 -- included entrance facilities as well as transport. In light of that error, the ACC instructed the parties to relitigate the UDIT rates in a May 2003 hearing. In

October 2003, the ACC ruled that the "new" DS3 UDIT rates should be set at the old UDIT rates and that the "new" rate should be effective as of June 2002.

Approximately two months *after* the ACC concluded that there was an error in the UDIT rates and had remanded the UDIT rates back to the Administrative Law Judge for further proceedings, Covad received a demand from Qwest to pay the true up amount for its DS3 UDITs in Arizona. The true up amount was calculated by Qwest as the difference between the old, interim rates and the then disputed "permanent" rates. Because the ACC had placed the "permanent" DS3 UDIT rates at issue, Covad disputed the true up invoice on the grounds that the true up claim was premature since the "permanent" rate was going to be relitigated in May of 2003. Despite independently knowing full well that the rate was not final and was likely to be changed or at least modified, and despite being reminded of that fact by Covad in its notices of dispute, Qwest continued to request payment of the true up amounts – even though Covad disputed the request for payment of a true up every single month and provided the very same clear and concise reason. It took over ten (10) months of disputing the true up invoice before Qwest acknowledged the dispute and that any claim for payment would await resolution by the ACC.

Plainly, Qwest did not consider the amount to be disputed in light of its repeatedly renewed request that Covad pay the true up amount. Under the Qwest proposal, Covad's legitimate reason for non-payment of the true up amount could have resulted in Qwest discontinuing the processing of orders and/or actually disconnecting circuits. Under its proposal, Qwest also could have demanded a deposit from Covad and payment of a reconnect charge for those circuits that had been disconnected. In light of the magnitude of Qwest's self-help remedies, Covad needs and deserves the protection it seeks here.

Q. EXPLAIN WHY COVAD'S PROPOSED BILLING, DELINQUENCY, ORDER DISCONTINUANCE, AND SERVICE DISCONNECTION PROVISIONS ARE REASONABLE AND SHOULD BE ADOPTED.

A. In a nutshell, what is reasonable (and therefore should be included in the interconnection agreement) cannot be determined in the abstract. To the contrary, reasonableness must be evaluated against the task that Covad faces, and the severity of the consequences resulting from late payment, discontinuance of order processing, disconnection of services and deposit requirements. And as I discussed here, the Covad proposed billing time frames should be adopted given the tens of thousands of pages of bills that must be reviewed, the type and quantity of deficiencies/errors found in those bills that supposedly cannot be corrected by Qwest, the difficulties that can arise when trying to submit a billing dispute, and the power Qwest may be able to wield over Covad's business in this state.

It is important to keep in mind that the interconnection agreement must provide for safeguards that will allow Covad to work around situations that may benefit Qwest at Covad's expense. These safeguards are becoming ever more important as Qwest apparently is now attempting to modify its PAP obligations, and eliminate the industry forum dedicated to improvements in the performance measures (PIDs). Covad's proposed billing time frames provide that safeguard, and should be approved by the Commission.

Q. EXPLAIN WHY THESE ISSUES WERE NOT RESOLVED DURING THE SECTION 271 PROCEEDINGS.

A. Qwest will undoubtedly claim that any and all billing issues were resolved during the Section 271 proceedings and that that is the end of the matter. While that provides an easy out for Qwest, the reality of Covad's billing relationship with Qwest is far more difficult. Since the conclusion of the Section 271 proceedings in this state, Covad has undertaken a massive review and revamping of its billing systems and processes, an effort in which I was involved. As a result of that effort, Covad is in a wholly different position now to evaluate, document and discuss in a regulatory proceeding the numerous billing problems we have with Qwest. And as I lay out above, there are numerous problems in Qwest's billings that not only necessitate, but also fully justify the relatively brief extension of the billing, delinquency, discontinuance and disconnection time frames that will be included in the Qwest-Covad interconnection agreement.

From a timing perspective, it is very easy to understand why Covad was unable to address in detail billing issues during 2002 in connection with the Section 271 proceedings in this state. Covad executed its original interconnection agreement with Qwest on February 25, 1998. Between that time and the conclusion of the SGAT proceeding in mid-2002, Covad was busy rolling out its network in this state, implementing the line sharing requirements and building out the line sharing network, and working on all the problems and barriers to providing service to end users and customers (which were documented and discussed during the Section 271 workshops).

It is no understatement to say that, in 1999, 2000, 2001, and into 2002, Covad was much more concerned about effectively, efficiently and successfully establishing and maintaining end users on the Covad network than any other element of its business. Since that time, of course, the parties have worked out a number of the key provisioning and repair issues, and Covad finally had the time to focus on the innumerable billing issues that existed in the Qwest bills. It's only because of that effort and subsequent experience in working through billing issues with Qwest on a business-to-business basis that we are now in a position to fully demonstrate why additional time is required in order to provide a fair and equitable billing process. I feel confident that if you asked any non-IXC CLEC representative that took part in the section 271 proceedings, that representative would tell a similar tale with respect to the "consensus" obtained on billing issues.

Q. PLEASE EXPLAIN WHY A COMPARISON OF COVAD'S BILLING POLICIES FOR ITS CUSTOMERS ARE IRRELEVANT TO THE TIME FRAMES THAT SHOULD BE APPLIED FOR COVAD'S REVIEW OF QWEST'S UNE, COLLOCATION AND TRANSPORT BILLS.

A. Qwest has suggested that Covad is being hypocritical in asking for more time to review its bills from Qwest than Covad gives to its own customers. That argument is nonsense. As you can see from the attached Exhibits KMD-3 through KMD-7, the bills Covad sends out for services are only two pages long, in total. A two page bill, with just a few line items that clearly state the product and product type for which the customer is being billed, are a far cry form the tens of thousands of pages, comprising over 30 feet of bills, that Covad must review every month. The Covad bills are much more like the Qwest residential phone bills, for which Covad agrees that a 30 day time frame for payment is appropriate.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. This concludes my Direct Testimony, however, I anticipate filing all responsive testimony permitted by the Commission, and being presented for cross examination at the hearing on the merits.