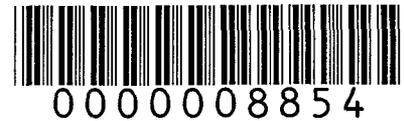


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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

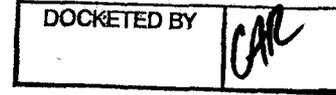
MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

2004 OCT -6 P 2:05

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED

OCT - 6 2004



IN THE MATTER OF THE PETITION OF DIECA  
COMMUNICATIONS, INC. dba COVAD  
COMMUNICATIONS COMPANY FOR  
ARBITRATION OF AN INTERCONNECTION  
AGREEMENT WITH QWEST CORPORATION.

DOCKET NO. T-03632A-04-0425  
T-01051B-04-0425

PROCEDURAL ORDER

BY THE COMMISSION:

On June 8, 2004, DIECA Communications, Inc., dba Covad Communications Company ("Covad") filed with the Arizona Corporation Commission ("Commission") a Petition for Arbitration ("Petition") of a proposed interconnection agreement with Qwest Corporation ("Qwest") pursuant to A.A.C. R14-2-1505 and Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act").

On July 6, 2004, Qwest filed a Response to Petition for Arbitration. On July 21, 2004, Qwest filed a Motion to Dismiss Portions of Covad's Petition for Arbitration. Qwest's Motion requests a Commission Order dismissing Issue 2 in Part G of Covad's Petition, to the extent Covad seeks Commission authority to: require Qwest to provide unbundled network elements ("UNEs") pursuant to Section 271 of the Act; set UNE rates that Qwest provides under Section 271; or require Qwest to provide UNEs under state law in a manner that conflicts with the access ordered by the Federal Communications Commission ("FCC") in its Triennial Review Order.<sup>1</sup>

On August 9, 2004, a Procedural Conference was conducted to discuss scheduling and various other procedural issues associated with this proceeding. At the Procedural Conference, the parties agreed on dates for filing testimony, conducting the hearing, and for filing briefs. The parties also agreed to a schedule for filing pleadings regarding Qwest's Motion to Dismiss, and for oral argument

<sup>1</sup> Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers ("Triennial Review Order"), 18 FCC Rcd. 16978 (2003), *aff'd in part and rev'd and vacated in part, United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

1 on the Motion. Pursuant to agreement of the parties, Covad filed its Response to Qwest's Motion to  
2 Dismiss on August 16, 2004; Staff filed its Opposition to Qwest's Motion to Dismiss on August 31,  
3 2004; and Qwest filed its Combined Reply to the Responses of Staff and Covad on September 10,  
4 2004. Also pursuant to agreement of the parties, on September 29, 2004, Qwest, Covad, and Staff  
5 filed their respective Comments regarding the effect on this proceeding of the FCC's interim  
6 unbundling rules and Notice of Proposed Rulemaking<sup>2</sup>.

7 IT IS THEREFORE ORDERED that the arbitration hearing shall commence on **February 7,**  
8 **2005, at 10:00 a.m.**, at the offices of the Commission, 1200 West Washington, Phoenix, Arizona  
9 85007.

10 IT IS FURTHER ORDERED that an oral argument on Qwest's Motion to Dismiss shall be  
11 held on **December 15, 2004, at 1:00 p.m.**, at the offices of the Commission.

12 IT IS FURTHER ORDERED that the parties shall reduce to writing and file their direct  
13 testimony and exhibits to be used at the arbitration no later than **December 20, 2004.**

14 IT IS FURTHER ORDERED that the parties shall file their rebuttal testimony by no later than  
15 **January 18, 2005.**

16 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and  
17 regulations of the Commission, except that: any objection to discovery requests shall be made within  
18 seven days<sup>3</sup> of receipt; responses to discovery requests shall be made within ten days of receipt; and  
19 the response time may be extended by mutual agreement of the parties involved if the request  
20 requires an extensive compilation effort. The discovery cut-off date shall be **January 21, 2005.**

21 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel  
22 discovery, any party seeking discovery may telephonically contact the Commission's Hearing  
23 Division to request a date for a procedural conference to resolve the discovery dispute; that upon such  
24 a request, a procedural conference will be convened as soon as practicable; and that the party making  
25 such a request shall forthwith contact all other parties to advise them of the date and shall at the

26  
27 <sup>2</sup> *Triennial Review Order, supra*; Order and Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling*  
*Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (rel.

28 <sup>3</sup> "days" refers to calendar days.

1 conference provide a statement confirming that the other parties were contacted.<sup>4</sup>

2 IT IS FURTHER ORDERED that the parties shall file an issues matrix by no later than  
3 **January 31, 2005.**

4 IT IS FURTHER ORDERED that a court reporter will transcribe the arbitration, the cost of  
5 which will be borne equally by the parties.

6 IT IS FURTHER ORDERED that the Arbitrator may rescind, alter, amend or waive any  
7 portion of this Procedural Order by subsequent Procedural Order or by ruling at the arbitration  
8 hearing.

9 DATED this 6<sup>th</sup> day of October, 2004

10   
11 \_\_\_\_\_  
12 DWIGHT D. NODES  
ARBITRATOR

13 The foregoing was mailed/delivered  
14 this 6 day of October, 2004 to:

15 Michael W. Patten  
16 ROSHKA HEYMAN & DEWULF  
17 One Arizona Center  
400 East Van Buren Street, Ste. 800  
Phoenix, AZ 85004

John Devaney  
PERKINS COIE, LLP  
607 Fourteenth Street NW, STE. 800  
Washington, DC 20005

18 Timothy Berg  
19 Theresa Dwyer  
20 FENNEMORE CRAIG  
3003 N. Central Avenue, Ste. 2600  
Phoenix, AZ 85012

Karen Shoresman Frame  
COVAD COMMUNICATIONS COMPANY  
7901 Lowry Blvd.  
Denver, CO 80230

21 Winslow B. Waxter  
22 QWEST SERVICES CORPORATION  
1005 17<sup>th</sup> Street, Ste. 200  
Denver, CO 80209

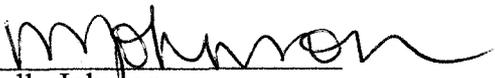
Christopher Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

23 Norman G. Curtright  
24 QWEST CORPORATION  
1801 California, Suite 4900  
25 Denver, CO 80202

Ernest G. Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

26  
27  
28 <sup>4</sup> The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations before seeking resolution of the controversy.

1 ARIZONA REPORTING SERVICE  
2 2627 N. Third Street, Ste. Three  
3 Phoenix, AZ 85004-1003

4 By:   
5 Molly Johnson  
6 Secretary to Dwight D. Nodes  
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