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January 31, 2005

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Via Hand Delivery

Dwight Nodes
Administrative Law Judge
Arizona Corporation Commission
1200 West Washington Avenue
Phoenix, AZ 85007

Re: ***Docket Nos. T-03632A-04-0425/T-01051B-04-0425; In the Matter of the Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration of an Interconnection Agreement with Qwest Corporation***

Dear Judge Nodes:

Enclosed for filing is the Joint Issues Matrix in the above matter. Since Covad filed its arbitration petition in this proceeding, the parties have resolved several issues that Covad included in its petition. The attached matrix identifies the limited number of issues that are still in dispute. The issues and sections of the Covad/Qwest interconnection agreement that have been resolved are as follows:

Issue 3 (Commingling, Ratcheting, and Pricing): The parties have resolved all issues involving ratcheting. These issues related to sections 9.1.1.4 (and all subsections) and 9.1.1 of the interconnection agreement. Please note that a portion of section 9.1.1 remains in dispute but only in connection with Issue 2. In addition, Covad would like to make it clear that its proposed section 9.1.1.4.2 is still in dispute, but only as it pertains to the scope of Qwest's commingling obligations (and not as to ratcheting). The parties have also settled the portions of their disputes relating to commingling that related to section 9.1.1.1 ("resale commingling") and section 9.1.1.5 ("EEL eligibility criteria").

Issue 4 (Collocation Space Provisioning): The parties have resolved all issues involving collocation space provisioning. These issues related to sections 8.1.1.3 and 8.3.1.9.

Issue 6 (Single Local Service Request): The parties have resolved all issues involving the single local service request. These issues related to sections 9.21.1, 9.21.4.1.6 and 9.24.1.

Issue 7 (Reciprocal Application of Maintenance Charges and Charges Assessed by the Parties): The parties have resolved all issues involving reciprocal application of maintenance charges. The issues involving reciprocal application of maintenance charges related to the section 4.0 definition of "maintenance of service charge" and by sections 9.2.2.9.11, 9.2.5.2.1, 12.3.4.2, 12.3.4.3, and 12.3.6.5. The issues involving charges assessed by the parties related to sections 9.4.4.4.1, 9.4.4.4.2, 9.4.6.3.1, 9.4.6.3.3, 9.21.3.3.1, 9.21.6.3.3, and 9.24.3.3.1.

Issue 8 (Payment and Billing Issues): The parties have resolved only the portion of payment and billing issues involving the period of time used to determine whether a payment is "repeatedly delinquent." This issue related to section 5.4.5.

The parties have also agreed upon an order for the presentation of witnesses:

Issue 1 – Copper Retirement

Michael Zulevic (Covad)

Karen Stewart (Qwest)

Issue 5 – Regeneration

Michael Zulevic (Covad)

Michael Norman (Qwest)

Issue 8 – Billing timeframes;

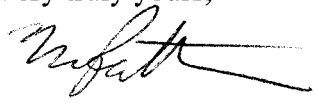
Elizabeth Balvin (Covad)

William Easton (Qwest)

Renee Albersheim (Qwest)

Please feel free to contact me if you have any questions regarding this proposed order of witnesses.

Very truly yours,



Michael Patten

Original and 15 copies of the foregoing
filed this 31st day of January, 2005 with:

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Copy of the foregoing hand-delivered/mailed
this 31st day of January, 2005 to:

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By Mary Ippolito

Arizona Updated Joint Disputed Issues List -
Docket No. T-03632A-04-0425/T-01051B-04-0425
Qwest/Covad Arizona Interconnection Agreement Negotiations
January 31, 2005

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
			NOTE: Underlined language is language proposed by Covad. Strikethrough language is Qwest proposed language that Covad does not agree with.	
Issue 1 9.1.15, (and subsections) Retirement of Copper Facilities	9.1.15 In the event Qwest decides to retire a copper loop, copper feeder or copper subloop and replace it with fiber, Qwest will: (i) provide notice of such planned retirement on its web site (www.qwest.com/disclosures); and (ii) provide email notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as	The *TRO* confirms the right of ILECs to retire copper loops and subloops that have been replaced with fiber. In granting ILECs the right to retire copper loops, the FCC rejected CLEC proposals that would have required ILECs to obtain regulatory approval before retiring these facilities. The FCC found that these conditions are	9.1.15 In the event Qwest decides to retire a copper loop, copper feeder, or copper Subloop and replaces it with fiber, Qwest shall provide: (a) notice of such planned retirement on its website (www.qwest.com/disclosures); and (ii) e-mail notice of such planned retirement to CLECs; and (iii) public notice of such planned replacement to the FCC. Qwest can proceed with copper retirement at the conclusion of the applicable FCC notice process as	Any notice given must be meaningful, and therefore Covad has included in its proposed language what information the notice should include. There is no legitimate basis for treating DSL service as an inferior service that may be disrupted as a result of a Qwest construction project. Covad's proposed

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	identified in FCC rules unless retirement was explicitly denied (or otherwise delayed or modified). Such notices shall be in addition to any applicable state commission requirements.	unnecessary because its existing notice rules for network changes provide "adequate safeguards" for CLECs. Thus, ILECs are permitted to retire copper loops and subloops, as long as they comply with the FCC's notice requirements relating to network changes. Other than the notice requirements, the *TRO* does not impose conditions on an ILEC's right to retire copper facilities. Covad's proposal would effectively eliminate this important right and should be	identified in FCC rules unless retirement was explicitly denied (or otherwise delayed or modified). Such notices shall be in addition to any applicable state commission requirements. The e-mail notice provided to each CLEC shall include the following information: city and state; wire center; planned retirement date; the FDI address; a listing of all impacted addresses in the DA; a listing of all of CLEC's customer impacted addresses; old and new cable media, including transmission characteristics; circuit identification information; and cable and pair information. 9.1.15.1 Continuity of	language merely clarifies that the facilities made available by Qwest will be of a character that will allow continued DSL service to the end user. The FCC's rules are designed to provide adequate safeguards to ensure that competitive LECs can work together with incumbent LECs, such as Qwest, "to ensure competitive LECs maintain access to loop facilities." *Triennial Review Order,* ¶ *281.* The FCC further clarified that the purpose of the rule changes was to ease restrictions in incumbent LECs

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		rejected. There is no basis in the *TRO* or in any other FCC order for requiring Qwest to provide an "alternative service" to Covad before it can retire a copper facility. In addition, Covad's proposal that the "alternative service" not result in a price increase for Covad or its customers would prevent Qwest from recovering its costs in violation of the Act's requirement that ILECs recover the costs they incur to provide interconnection and access to network elements. *See* 47	Service During Copper Retirement. This section applies where Qwest retires copper feeder cable and the resultant loop is comprised of either (1) mixed copper media (i.e. copper cable of different gauges or transmission characteristics); or (2) mixed copper and fiber media (i.e. a hybrid copper-fiber loop) (collectively, "hybrid loops") over which Qwest itself could provide a retail DSL service. This section does not apply where the resultant loop is a fiber to the home (FTTH) loop or a fiber to the curb (FTTC) loop (a fiber transmission facility connecting to copper distribution plant that is not more than 500 feet from the customer's premises) serving mass market or	"unless the copper retirement scenario suggests that competitors will be denied access to the loop facilities required under our rules." *Triennial Review Order,* ¶ *282.* Access to xDSL capable loops is undeniably required by the FCC's rules, and the copper retirement scenarios Covad identifies in its proposals would clearly deny Covad access to xDSL capable loops. The FCC also clarified that the intent of their copper retirement rules was not to preempt state commission's

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		U.S.C. 252(d)(1). Further, Covad's new proposal that would make its "alternative service" requirement inapplicable to situations in which Qwest replaces copper facilities with fiber-to-the-home ("FTTH") or fiber-to-the-curb loops ("FTTC") does not cure the legal flaws in Covad's proposed language. The FCC has clearly stated that ILECs are permitted to retire copper loops that they have replaced with any fiber facility, not just FTTH and FTTC fiber facilities. *See, e.g.*, *TRO* at ¶ 271. Covad's	residential End User Customers. 9.1.15.1.1 When Qwest retires copper feeder for loops serving CEC-served End User Customers or the CLEC at the time such retirement is implemented, 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.	evaluation of any copper retirement plan, or any other existing state legal or regulatory requirements. *Triennial Review Order*, ¶ 284.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		improper proposal to limit Qwest's retirement rights to situations involving the installation of FTTH or FTTC loops would create an economic disincentive for Qwest to deploy fiber facilities in violation of the Act's objective of encouraging investment in those facilities. Qwest's proposed language is consistent with the *TRO*. Specifically, it provides that Qwest can retire copper facilities but, consistent with the FCC's network modification	Such alternative service shall be provisioned in a manner that does not degrade 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.	

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		procedures, establishes a notice and objection process for planned retirements. Qwest's proposal also provides more protection for Covad than required under the *TRO* by establishing that: (1) Qwest will leave copper loops and subloops in service where it is technically feasible to do so; and (2) Qwest will coordinate with Covad the transition to new facilities "so that service interruption is held to a minimum."		

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
Issue 2 4.0 Definition ("Unbundled Network Element") Unified Agreement – 271 Elements Included	"Unbundled Network Element" (UNE) is a Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access or for which unbundled access is provided under this Agreement. Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.	Covad asks the Commission to exercise authority it does not have by requesting language that would require Qwest to provide network elements under section 271 and to provide elements under state law that the FCC has ruled ILECs are not required to provide. Even if the Commission had the authority Covad assumes, Covad's proposed language requiring Qwest to provide unbundled access to "all UNEs required by [§ 271] and [state law]" is highly ambiguous	"Unbundled Network Element" (UNE) is a Network Element that has been defined by the FCC or the Commission as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access, for which unbundled access is required under section 271 of the Act or applicable state law, or for which unbundled access is provided under this Agreement. ~~Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.~~	Qwest continues to have obligations to provide network elements on an unbundled basis pursuant to Section 271 and state law. To label these elements as something other than "unbundled network elements" creates confusion and is semantically illogical. In addition, there is no justification for excluding non-251 UNEs from negotiations. To do otherwise would require the Commission to create an entirely new regime to review agreements

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		and would inevitably lead to disputes about the parties' rights and obligations. In addition, determinations of which network elements ILECs are required to provide must be based on fact-specific evaluations that focus on each individual element. Covad's undifferentiated request for access to all network elements required under section 271 and state law lacks the specificity needed to make the element-by-element determinations of whether applicable		reached with respect to state unbundling obligations, if not Section 271. After the *Triennial Review Order,* it is necessary to draw the distinction between unbundled network elements that meet the FCC's impairment standard under Section 251, and unbundled network elements that are available pursuant to Section 271 regardless of impairment analysis and/or state law. Failing to distinguish between types of UNEs now available will lead to confusion,

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		unbundling requirements are satisfied. No provision of the Act authorizes state commissions to impose or enforce obligations under § 271. First, state commission arbitration of disputes regarding the duties imposed by federal law is limited to those imposed by § 251 and does not include the conditions imposed by § 271. Second, § 271 itself confers no authority on state commissions to impose binding obligations. Third, basic principles of		especially with respect to the Parties intent when using the term "unbundled network element."

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		federal preemption prevent the Commission from imposing unbundling requirements under Utah law that the FCC has rejected.		
Issue 2 9.1.1 Unified Agreement – 271 Elements Included	Changes in law, regulations or other "Existing Rules" relating to Unbundled Network Elements (UNEs), including additions and deletions of elements Qwest is required to unbundle and/or provide in a UNE Combination, shall be incorporated into this Agreement by amendment pursuant to Section 2.2. CLEC and Qwest agree that the UNEs identified in Section 9 are not exclusive and that pursuant to changes in FCC rules, state laws, or the Bona Fide Request Process, or Special	*See* Qwest position set forth above relating to § 4.0 Definition of "Unbundled Network Elements."	9.1.1 Qwest will provide to CLEC any and all UNEs required by the Telecommunications Act of 1996 (including, but not limited to Sections 251(b), (c), 252(a) and 271), FCC Rules, FCC Orders, and/or applicable state rules or orders, or which are ordered by the FCC, any state commission or any court of competent jurisdiction. Qwest is required to connect or combine 251(c)(3) UNEs with any and all of its service offerings, as required by the	See above.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	Request Process (SRP) CLEC may identify and request that Qwest furnish additional or revised UNEs to the extent required under Section 251(c)(3) of the Act and other Applicable Laws. Failure to list a UNE herein shall not constitute a waiver by CLEC to obtain a UNE subsequently defined by the FCC or the state Commission. UNE's shall only be obtained for the provision of Qualifying Services. To the extent a UNE is being used to provide Qualifying Services and spare capacity exists on that UNE, it may then be used for Non-Qualifying Services. Such use of spare capacity for Non-Qualifying Services will not affect the pricing of that UNE as set forth in Exhibit A. If it is determined that the Unbundled Network		Telecommunications Act of 1996, FCC Rules, FCC Orders and/or state law or orders. Qwest must provide all technically feasible 251(c)(3) UNE combinations, including 251(c)(3) UNEs ordinarily combined and new 251(c)(3) UNE combinations. Changes in law, regulations or other "Existing Rules" relating to Unbundled Network Elements (UNEs), including additions and deletions of elements Qwest is required to unbundle and/or provide in a UNE Combination, may be incorporated into this Agreement by amendment pursuant to Section 2.2. CLEC and Qwest agree that the UNEs identified in Section 9 are not exclusive and that pursuant to FCC rules, state laws, or the	

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	Elements are used exclusively for Non-Qualifying Services, CLEC will have thirty (30) calendar Days to contact Qwest and make alternative service arrangements.		Bona Fide Request Process, or Special Request Process (SRP) CLEC may identify and request that Qwest furnish additional or revised UNEs to the extent required under Section 251(c)(3) or Section 271 of the Act, or other Applicable Laws. Failure to list a Section 251, Section 271 or state-mandated UNE herein shall not constitute a waiver by CLEC to obtain a UNE subsequently defined by the FCC or the state Commission. To the extent a UNE is being used to provide Qualifying Services and spare capacity exists on that UNE, it may then be used for Non-Qualifying Services. Such use of spare capacity for Non-Qualifying Services will not	

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
			affect the pricing of that UNE as set forth in Exhibit A. ~~UNE's shall only be obtained for the provision of Qualifying Services. If it is determined that the Unbundled Network Elements are used exclusively for Non-Qualifying Srvices, CLEC will have thirty (30) calendar Days to contact Qwest and make alternate service arrangements.~~	
Issue 2 9.1.1.6 Unified Agreement – 271 Elements Included	9.1.1.6 On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements that had formerly been required to be offered pursuant to Section 251 of the Act. These former Network Elements were determined by the FCC	*See* Qwest position set forth above relating to § 4.0 Definition of "Unbundled Network Elements."	9.1.1.6 On the Effective Date of this Agreement, Qwest is no longer obligated to provide to CLEC certain Network Elements pursuant to Section 251 of the Act. Qwest will continue providing access to certain network elements as	See above. It is not necessary to provide a list of products no longer available under Section 251 because many of them are nevertheless available under

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	to not satisfy the FCC's impairment test. As a result, these former Network Elements are not available pursuant to this Agreement. a) Ocn Loops; b) Feeder Subloops; c) DS3 Loops in excess of two (2) DS3 Loops per End User Customer location; d) E-UDIT (Enhanced Dedicated Unbundled Interoffice Transport) and E-UDF (Unbundled Dark Fiber) from a Qwest Wire Center to a CLEC Wire Center); e) Ocn UDIT f) DS3 Unbundled Dedicated Interoffice Transport (UDIT) in excess		required by Section 271 or state law, regardless of whether access to such UNEs is required by Section 251 of the Act. This Agreement sets forth the terms and conditions by which network elements not subject to Section 251 unbundling obligations are offered to CLEC.	Section 271 or state law. To the extent any elements are truly no longer available (such as E-UDIT), their absence from the Agreement should be sufficient to demonstrate that Qwest is not obligated to provide them.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	of twelve (12) DS3 circuits per route; g) Unbundled Signaling (except in conjunction with Unbundled Switching and UNE-P); h) Call Related Databases, including 8XX, LNP, ICNAM, LIDB and AIN) except in conjunction with Unbundled Switching and UNE-P; i) Packet Switching; j) UDIT and UDF as a part of a Meet-Point arrangement, billed entrance facility; k) Remote Node/Remote Port l) Line Sharing, in accordance with the			

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	Grandfathering and Transition Plan described in Section9.4.1.2; m) Fiber to the Home, in accordance with Section 9.2.1.2; n) Operator Services and Directory Assistance. except in conjunction with Unbundled Switching and UNE-P when Qwest does not provide customized routing or the equivalent; o) Unbundled Switching at a DS1 capacity, pursuant to a transition process described in Section 9.11.2.0; p) Unbundled Local Tandem Switching provisioned at the DS1 or above capacity;			

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	q) SONET add/drop multiplexing; and r) Non-copper distribution Subloop unless required to access Qwest owned inside wire at an MTE.			
Issue 2 9.1.1.7 Unified Agreement – 271 Elements Included	9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a preceding Interconnection Agreement, any of the Network Elements described in Section 9.1.1.6 above for which an independent unbundling obligation exists under Section 271 of the Act, absent an agreement to the contrary, Qwest shall bill for such services in accordance with prices and terms that will be described on Qwest's	*See* Qwest position set forth above relating to § 4.0 Definition of "Unbundled Network Elements."	9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a ~~preceding~~ Interconnection Agreement, any of the Network ~~Elements described in Section 9.1.1.6~~ above for which an independent unbundling obligation exists under Section 271 of the Act, or applicable state law, ~~absent an agreement to the contrary~~ then Qwest shall bill for such UNEs and	Qwest is not entitled to unilaterally impose retail prices for UNEs available pursuant to Section 271 or state law. There are sound public policy reasons to believe that these rates neither comply with Sections 201 and 202 of the Act or state law describing the proper pricing for UNEs.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement.		services using the Commission-approved TELRIC rates for such UNEs until such time as new, just, reasonable and non-discriminatory rates (as required by Sections 201 and 202 of the Act or applicable state law) are approved for the Section 271 or state law required UNEs ~~in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement.~~	Previously established TELRIC rates offer a less problematic alternative, at least until the Commission decides how these rates should be set in the future so they are compliant with state and federal law.
Issue 2 9.1.1.7 Pricing of 271 Elements	9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a preceding Interconnection Agreement, any of the Network Elements described in Section 9.1.1.6	Covad's position regarding pricing of network elements Qwest provides pursuant to § 271 has two basic flaws. First, Covad assumes	9.1.1.7 If, on the Effective Date of this Agreement, Qwest is providing to CLEC, pursuant to orders placed in accordance with a ~~preceding~~ Interconnection Agreement, any of the Network Elements	Qwest is not entitled to unilaterally impose retail prices for UNEs available pursuant to Section 271 or state law. There are sound public policy

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	above for which an independent unbundling obligation exists under Section 271 of the Act, absent an agreement to the contrary, Qwest shall bill for such services in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement.	erroneously that state commissions have authority to set prices for these elements. They do not, as the pricing of § 271 elements is within the FCC's exclusive jurisdiction. Second, Covad claims incorrectly that the FCC has authorized the application of TELRIC-like pricing principles to § 271 elements. The FCC and the D.C. Circuit have both ruled very clearly that TELRIC pricing does not apply to network elements that BOCs provide under § 271 and that the prices for such elements are to be set by the	~~described in Section 9.1.1.6 above~~ for which an independent unbundling obligation exists under Section 271 or applicable state law, of the Act, ~~absent an agreement to the contrary~~, then Qwest shall bill for such UNE's and services using the Commission –approved TELRIC rates for such UNEs until such time as new, just, reasonable and non-discriminatory rates (as required by Section 271 or state law required UNEs. ~~in accordance with prices and terms that will be described on Qwest's website or applicable Tariff. Such Billing shall commence on the Effective Date of this Agreement.~~	reasons to believe that these rates neither comply with Sections 201 and 202 of the Act or state law describing the proper pricing for UNEs. Previously established TELRIC rates offer a less problematic alternative, at least until the Commission decides how these rates should be set in the future so they are compliant with state and federal law.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		FCC based on the standards in §§ 201 and 202 of the Communications Act of 1934.		
Issue 2 9.1.5 Unified Agreement – 271 Elements Included	9.1.5 CLEC may connect Network Elements in any Technically Feasible manner. Qwest will provide CLEC with the same features, functions and capabilities of a particular element or combinations of elements that Qwest provides to itself. Qwest will provide CLEC with all of the features and functionalities of a particular element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC), so that CLEC can provide any Telecommunications	*See* Qwest position set forth above relating to § 4.0 Definition of "Unbundled Network Elements" and "251(c)(3) UNE."	9.1.5 CLEC may connect Network Elements in any Technically Feasible manner. <u>CLEC shall have the right to access UNEs, ancillary services or Network Elements offered pursuant to Section 271 at any technically feasible point as required by 47 C.F.R. 51.311, 47 U.S.C. 251(c)(3) and 47 U.S.C. 271 et seq.</u> Qwest will provide CLEC with the same features, functions and capabilities of a particular element or combinations of elements that Qwest provides to itself. Qwest will provide CLEC with all of the	Qwest continues to have obligations to provide network elements on an unbundled basis pursuant to Section 271 and state law. There is no justification for excluding non-251 UNEs from provisions of the agreement describing access to UNEs.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	Services that can be offered by means of such element or combination of elements. Qwest will provide Unbundled Network Elements to CLEC in a manner that allows CLEC to combine such elements to provide any Telecommunications Services. Qwest shall not in any way restrict CLECs use of any element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC) except as Qwest may be expressly permitted or required by Existing Rules.		features and functionalities of a particular element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in combination or as elements to be combined by CLEC), so that CLEC can provide any Telecommunications Services that can be offered by means of such element or combination of elements. Qwest will provide Unbundled Network Elements to CLEC in a manner that allows CLEC to combine such elements to provide any Telecommunications Services. Qwest shall not in any way restrict CLECs use of any element or combination of elements (regardless of whether such combination of elements is ordered from Qwest in	

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
			combination or as elements to be combined by CLEC) except as Qwest may be expressly permitted or required by Existing Rules.	
Issue 2 9.2.1.3 Unified Agreement – 271 Elements Included	9.2.1.3 In the event the Commission determines, in accordance with 47 CFR 519(a)(4)-(6) that requesting Telecommunications Carriers are not impaired without access to DS1, DS3 or Dark Fiber Loops to a specific End User Customer location, Qwest will not provide, and CLEC shall not submit orders for, DS1, DS3, or Dark Fiber Loops, as appropriate, to such specific End User Customer locations. Qwest will maintain on its website a separate listing for DS1, DS3 and Dark Fiber Loops those End User Customer	*See* Qwest position set forth above relating to § 4.0 Definition of "Unbundled Network Elements".	9.2.1.3 In the event the Commission determines, in accordance with 47 CFR 519(a)(4)-(6) that requesting Telecommunications Carriers are not impaired without access to DS1, DS3 or Dark Fiber Loops to a specific End User Customer location pursuant to Section 251 of the Act, Qwest will provide access to such loops pursuant to Section 271 of the Act and applicable state law. Qwest will maintain on its website a separate listing for DS1, DS3, and Dark Fiber Loops for those End User Customer premises for	Notwithstanding any finding of non-impairment, existing UNEs must nevertheless be made available pursuant to Section 271 and state law. The Agreement should create an orderly process for the movement of UNEs from one category to another, rather than create uncertainty as to whether 271 or state law obligations apply.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	premises for which the Commission has so found. In the event CLEC has DS1, DS3 or Dark Fiber Loops in service to such a specific End User Customer location that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such Loops in accordance with the Qwest Special Access Tariff.		which the Commission has found non-impairment under Section 251 of the Act. In the event CLEC has DS1, DS3, or Dark Fiber Loops in service to such a specific End User Customer location that pre-exists the Commission determination, CLEC shall make arrangements for any records changes, or alternate services, as required by applicable state law, and requested by Qwest. If such alternative arrangements are not in place within sixty (60) days of the effective date of the Commission determination, Qwest may bill for such Loops in accordance with Section 9.1.1.7 above.	
Issue 2 9.2.1.4	9.2.1.4 Where Unbundled Loops at a DS-3 capacity are available, Qwest is not	*See* Qwest position set forth above relating to § 4.0	9.2.1.4 Where Unbundled Loops at a DS-3 capacity are available, Qwest is not	See above.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
Unified Agreement – 271 Elements Included	required to provide, and CLEC shall not submit orders for, more than two (2) Unbundled Loops at a DS3 capacity for any single End User Customer location.	Definition of "Unbundled Network Elements."	required to provide pursuant to Section 251 of the Act, and CLEC shall not submit orders for, more than two (2) Unbundled Loops at a DS3 capacity for any single End User Customer location. Notwithstanding the above, CLEC may request such additional loops pursuant to Section 271 of the Act or applicable state law, and will be charged rates for such additional loops in accordance with Section 9.1.1.7 above.	
Issue 2 9.3.1.1 Unified Agreement – 271 Elements	9.3.1.1 An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission	*See* Qwest position set forth above relating to § 4.0 Definition of "Unbundled Network Elements".	9.3.1.1 An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission	See above.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
Included	facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry,	In addition, in the *TRO*, after careful consideration of the standards set forth in Section 251(d)(2) and the policies reflected in the Act, the FCC determined that ILECs are not required to provide unbundled access to fiber subloops.[1] Notwithstanding this unequivocal ruling, Covad's proposal would require Qwest to provide access to these facilities. This demand incorrectly assumes that state	facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of	

[1] *Triennial Review Order* at ¶ 253.

[2] *Id.*

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. This	commissions have authority to require unbundling under Section 271 and can impose unbundling requirements under Section 271 and state law that the FCC has specifically rejected. In ruling that ILECs are not required to unbundle feeder subloops, the FCC found that an unbundling requirement for these facilities would undermine the objective of Section	entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis, pursuant to Section 251 of the Act, to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access , pursuant to Section 251 of the Act, to the feeder facilities only to the extent it is part of a complete transmission	

[3] *Id.*

[4] *Id.*

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	section does not address Dark Fiber Subloop which is addressed in Section 9.7.	706 of the Act "to spur deployment of advanced telecommunications capability."[2] The FCC recognized that access to ILECs' fiber feeder may be necessary for CLECs to obtain access to unbundled copper subloops, but it nevertheless did not require feeder unbundling. Instead, it encouraged carriers to negotiate arrangements for obtaining access to copper subloops, stating it "expect[s] that incumbent LECs will develop wholesale service offerings for access to their fiber feeder to ensure that	path, not a subloop, between the Central Office and the End User Customer's premises or MTE. Notwithstanding the limitations on subloop unbundling pursuant to Section 251 of the Act described above, Qwest will make remaining feeder subloops available as required by Section 271 of the Act and other Applicable Law. This section does not address Dark Fiber Subloop which is addressed in Section 9.7.	

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		competitive LECs have access to copper subloops."[3] Importantly, and consistent with its ruling that ILECs are not required to unbundle feeder subloops, the FCC emphasized that "the terms and conditions of such access would be subject to sections 201 and 202 of the Act."[4] Accordingly, Covad's demand for unbundled access to feeder subloops must be rejected. Specifically, as discussed, state commissions are without authority to impose any		

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		unbundling or other obligations under Section 271; Covad's request that this Commission require feeder subloop unbundling under that section assumes authority that does not exist. In addition, any attempt to impose feeder subloop unbundling under state law would be preempted by the FCC's clearly expressed finding that unbundling this network element would undermine the federal law and policy reflected in Section 706.		
Issue 2	9.3.1.2 Standard Subloops available.	*See* Qwest position set forth above	9.3.1.2. Standard Subloops available.	See above.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
9.3.1.2 Unified Agreement – 271 Elements Included	b) Intentionally Left Blank	relating to section § 9.3.1.1.	b) DS1 Capable Unbundled Feeder Loop	
Issue 2 9.3.2.2 9.3.2.2.1 Unified Agreement – 271 Elements Included	9.3.2.2 Intentionally Left Blank 9.3.2.2.1 Intentionally Left Blank	*See* Qwest position set forth above relating to § 9.3.1.1.	9.3.2.2 Feeder Loops 9.3.2.2.1 DS1 Capable Unbundled Feeder Loop is a digital transmission path that is provisioned from a Qwest Central Office network interface, which consists of a DSX-1 panel or equivalent, to the accessible terminal. The DS1 Capable Unbundled Feeder Loop transports bi-directional DS1 signals with a nominal transmission rate of 1.544 Mbit/s.	See above.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
Issue 2 9.6 (g) Unified Agreement – 271 Elements Included	9.6 Unbundled Dedicated Interoffice Transport (UDIT) g) UDIT on routes where the Commission has found no CLEC impairment.	*See* Qwest position set forth above at relating to § 4.0 Definition of "Unbundled Network Elements."	9.6 Unbundled Dedicated Interoffice Transport (UDIT) g) UDIT on routes where the Commission has found no CLEC impairment <u>under Section 251 of the Act; provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes.</u>	
Issue 2 9.6.1.5 Unified Agreement – 271 Elements Included	9.6.1.5 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated DS3 transport along a particular route, Qwest will	*See* Qwest position set forth above relating to § 4.0 Definition of "Unbundled Network Elements."	9.6.1.5 In the event the Commission determines that requesting Telecommunications Carriers are not impaired without access to dedicated DS3 transport along a particular route, Qwest will	Notwithstanding any finding of non-impairment, existing UNEs must nevertheless be made available pursuant to Section 271 and state law.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	not provide, and CLEC shall not submit orders for, DS3 UDIT channels along such route(s). Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for the service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.		not provide, and CLEC shall not submit orders for, DS3 UDIT channels along such route(s); provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes.	The Agreement should create an orderly process for the movement of UNEs from one category to another, rather than create uncertainty as to whether 271 or state law obligations apply.
Issue 2 9.6.1.5.1	9.6.1.5.1 Qwest will maintain on its website a listing of routes for which the Commission has so found.	*See* Qwest position set forth above relating to § 4.0 Definition of	9.6.1.5.1 Qwest will maintain on its website a listing of routes for which the Commission has found	Notwithstanding any finding of non-impairment, existing UNEs must

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
Unified Agreement – 271 Elements Included	In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.	"Unbundled Network Elements."	no impairment under Section 251 and also has not required access under Section 271 or applicable state law. In the event CLEC has DS3 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within ~~sixty (60)~~ ninety (90) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.	nevertheless be made available pursuant to Section 271 and state law. The Agreement should create an orderly process for the movement of UNEs from one category to another, rather than create uncertainty as to whether 271 or state law obligations apply.
Issue 2 9.6.1.6 Unified	9.6.1.6 In the event the Commission determines that requesting Telecommunications Carriers are not impaired	*See* Qwest position set forth above relating to § 4.0 Definition of "Unbundled Network	9.6.1.6 In the event the Commission determines that requesting Telecommunications Carriers are not impaired	Notwithstanding any finding of non-impairment, existing UNEs must nevertheless be

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
Agreement – 271 Elements Included	without access to dedicated DS1 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS1 UDIT channels along such route(s). Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.	Elements."	without access to dedicated DS1 transport along a particular route, Qwest will not provide, and CLEC shall not submit orders for, DS1 UDIT channels along such route(s); provided that, if the Commission has determined that access is nonetheless required under Section 271 of the Act or applicable state law, then Qwest shall continue to provide UDIT on those routes. ~~Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty~~	made available pursuant to Section 271 and state law. The Agreement should create an orderly process for the movement of UNEs from one category to another, rather than create uncertainty as to whether 271 or state law obligations apply.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
			~~(60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.~~	
Issue 2 9.6.1.6.1 Unified Agreement – 271 Elements Included	9.6.1.6.1 Qwest will maintain on its website a listing of routes for which the Commission has so found. In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within sixty (60) Days of the effective date of the Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff	*See* Qwest position set forth above relating to § 4.0 Definition of "Unbundled Network Elements."	9.6.1.6.1 Qwest will maintain on its website a listing of routes for which the Commission has found no impairment under Section 251 and also has not required access under Section 271 or applicable state law. In the event CLEC has DS1 UDIT transport in service along such a route that pre-exists the Commission determination, CLEC shall make arrangements for other service. If such alternative arrangements are not in place within ~~sixty (60)~~ ninety (90) Days of the effective date of the	The list referenced by this section should only have relevance with respect to transport routes that are completely unavailable under applicable law, if any.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
			Commission determination, Qwest may bill for such transport in accordance with the Qwest Special Access Tariff.	
Issue 2 9.21.2 Unified Agreement – 271 Elements Included	9.21.2 Terms and Conditions On the effective date of a Commission determination that Qwest is no longer required to provide UNE-P Combination services in a market area Line Splitting is also not available in that market area to the extent CLEC has an embedded base of Line Splitting End User Customers on the effective date of the Commission determination, CLEC shall transition its embedded base of Line Splitting End User Customers in accordance with the Transition Timelines	*See* Qwest position set forth above relating to § 4.0 Definition of "Unbundled Network Elements."	9.21.2 Terms and Conditions ~~On the effective date of a Commission determination~~ If the Commission determines that Qwest is no longer required to provide UNE-P Combination services in a market area pursuant to Section 251 of the Act, CLEC shall not submit new orders for Line Splitting ~~is also not available in that market area~~ as of the date the Commission rules CLECs are no longer entitled to submit orders for unbundled switching. If, notwithstanding the Section	Notwithstanding any finding of non-impairment, existing UNEs must nevertheless be made available pursuant to Section 271 and state law. The Agreement should create an orderly process for the movement of UNEs from one category to another, rather than create uncertainty as to whether 271 or state law obligations apply.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	for unbundled switching, as described in Section 9.11.2.0.1. In such markets where Line Splitting is not available, Loop Splitting will continue to be available pursuant to Section 9.24 of this Agreement.		251 determination, Qwest is required to provide access to unbundled switching under Section 271 or applicable state law, then line splitting remains available in that market area. To the extent Qwest is no longer required to provide access to unbundled switching under any applicable law, and ~~T~~to the extent CLEC has an embedded base of Line Splitting End User Customers on the effective date of the Commission determination, CLEC shall transition its embedded base of Line Splitting End User Customers in accordance with the Transition Timelines for unbundled switching, as described in Section 9.11.2.0.1. In such markets where Line Splitting is not	

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
			available, Loop Splitting will continue to be available pursuant to Section 9.24 of this Agreement.	
Issue 3 4.0 Definition ("251(c)(3) UNE", and "Commingling") Commingling	"Commingling" means the connecting, attaching, or otherwise linking of an Unbundled Network Element, or a Combination of Unbundled Network Elements, to one or more facilities or services that a requesting Telecommunications Carrier has obtained at wholesale from Qwest, or the combination of an Unbundled Network Element, or a Combination of Unbundled Network Elements, with one or more such facilities or services.	*See* Qwest position set forth above relating to § 4.0 Definition of "Unbundled Network Elements." Further, under the FCC's *Interim Unbundling Rules*, parties are bound by the terms and conditions in interconnection agreements as of June 15, 2004 relating to access to enterprise market loops, dedicated transport, and switching. The existing Qwest/Covad agreement that was	"251(c)(3) UNE" means any unbundled network element obtained by CLEC pursuant to Section 251 of the Act. "Commingling" means the connecting, attaching, or otherwise linking of ~~an Unbundled Network Element,~~ 251(c)(3) UNE's or a Combination of ~~Unbundled Network Elements,~~ 251(c)(3) UNE's to one or more facilities or services that a requesting Telecommunications Carrier has obtained at wholesale from Qwest, pursuant to any method other than unbundling under Section 251(c)(3) of the Act,or the combination of an	Covad concedes that any commingling arrangement involves the attachment of a UNE obtained pursuant to Section 251(c)(3) with another product. The proposed revisions eliminate any confusion with respect to Qwest's obligations to commingle non-UNEs with UNEs available pursuant to Section 271 or state law.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		in effect as of June 15, 2004 does not provide for commingling and, hence, Covad's request for any commingling involving these elements is inconsistent with the *Interim Rules.* In addition, consistent with the rulings in the *TRO* relating to commingling, Qwest's proposed language establishes that Covad can obtain from Qwest UNEs and UNE combinations commingled with wholesale services and facilities, and	~~Unbundled Network Element,~~ a 251(c)(3) UNEor a Combination of ~~Unbundled Network Elements~~, 251(c)(3) UNE's with one or more such facilities or services.	

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		that Covad can request Qwest to perform the functions to provision such commingling. Covad seeks to expand Qwest's commingling obligations beyond what the FCC has required by proposing language that would obligate Qwest to commingle UNEs and UNE combinations with network elements and services for which unbundling is not required under § 251 but that are provided under § 271. The *TRO* does not require commingling with		

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		elements and services provided under § 271. Moreover, Covad's language assumes incorrectly that state commissions have authority to determine obligations relating to § 271. As discussed above in connection with Issues 2 and 3, states have no decision-making authority under § 271 and therefore cannot order ILECs to provide or commingle § 271 elements or services. In addition, any obligations that Qwest has under § 271 are beyond		

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		the scope of this § 252 arbitration, which is expressly limited to issues involving Qwest's duties under §§ 251(b) and (c).		
Issue 3 9.1.1	*See* Issue 2.	*See* Qwest position set forth above relating to § 4.0 Definition of "Unbundled Network Elements".	*See* Issue 2.	See Covad position set forth above at page 4.
Issue 3 9.1.1.1 Commingling	9.1.1.1 This Agreement does not provide for the purchase and/or provision of resold telecommunications services with unbundled network elements provided pursuant to section 251(c)(3) of the Act, or for commingling of resale telecommunications services with other resale telecommunications services. At CLEC's	*See* Qwest position set forth above relating to § 4.0 Definition of "Commingling."	9.1.1.1 <u>Commingling - CLEC may commingle 251(c)(3) UNEs and combinations of 251(c)(3) UNEs with any other services obtained by any method other than unbundling under section 251(c)(3) of the Act, including switched and special access services offered pursuant to tariff</u>	See above.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	request, the parties will negotiate an amendment to this Agreement governing resale and the commingling of resold telecommunications pursuant to Applicable Law.		and resale. Qwest will perform the necessary functions to effectuate such commingling upon request. This Agreement does not provide for the purchase and/or provision of resold telecommunications services with unbundled network elements provided pursuant to section 251(c)(3) of the Act, or for commingling of resale telecommunications services with other resale telecommunications services. At CLEC's request, the parties will negotiate an amendment to this Agreement governing resale and the commingling of resold telecommunications pursuant to Applicable Law.	
Issue 5	8.2.1.23.1.4 CLEC is responsible for the	This issue involves the pricing and	8.2.1.23.1.4 CLEC is responsible for the end-to-	Even if Qwest is permitted to

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
8.2.1.23.1.4 Regeneration Requirements	end-to-end service design that uses ICDF Cross Connection to ensure that the resulting service meets its Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection. Regeneration may be required, depending on the distance parameters of the combination.	provisioning of CLEC-to-CLEC cross connections where regeneration is required. Pursuant to 47 C.F.R. 51.323(h), the FCC does not require Qwest to provision CLEC-to-CLEC cross-connections because Qwest permits collocating CLECs to interconnect with each other using their own facilities in a Qwest central office. Absent an obligation to provision a cross-connection, Qwest has no obligation to provide regeneration. Even though not required	end service design that uses ICDF Cross Connection to ensure that the resulting service meets its Customer's needs. This is accomplished by CLEC using the Design Layout Record (DLR) for the service connection. <u>Depending on the distance parameters of the combination, regeneration may be required. Qwest shall assess charges for CLEC to CLEC regeneration, if any, on the same terms and conditions, and at the same rates as ILEC to CLEC regeneration.</u>	implement a separate charge for regeneration in the future, such a charge must comply with section 251(c)(6) of the Act and should be offered on the same pricing, terms and conditions as ILEC-to-CLEC cross connections requiring regeneration.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		to do so, Qwest permits CLECs to provision their own connections, and if regeneration is required a CLEC may purchase an EICT under Qwest's FCC 1 Access Tariff. The EICT product is the end to end connection and includes any necessary regeneration. Covad claims that, Qwest's pricing for CLEC-to-CLEC connections should be the same as an ILEC to CLEC connection, because Qwest is in a position to maximize efficiencies for Covad's CLEC-to-		

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		CLEC connections. Qwest does not charge for regeneration if a CLEC is connecting to the Qwest network, therefore, Covad's proposal would have Qwest provide CLEC-to-CLEC regeneration free of charge. This argument fails because it is based on the fundamentally unreasonable and legally unsupportable notion that Qwest should have the obligation to maximize efficiencies for the benefit of Covad and its CLEC partners to the detriment of Qwest. Because Covad's		

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
		regeneration proposal is squarely based on this flawed foundation, its CLEC-to-CLEC regeneration proposal is also unreasonable and should be rejected.		
Issue 5 8.3.1.9 Regeneration Requirements	8.3.1.9 Channel Regeneration Charge. Required when the distance from the leased physical space (for Caged or Cageless Physical Collocation) or from the collocated	See Qwest position set forth above at page 37 (§ 8.2.1.23.1.4)	8.3.1.9 <u>Channel Regeneration Charge. Required when the distance from CLEC's leased physical space (for Caged or Cageless Physical Collocation) or from the collocated equipment (for Virtual Collocation) to the Qwest network ("ILEC to CLEC regeneration"), to CLEC's non-contiguous Collocations space ("CLEC</u>	Qwest should not be permitted to charge non-TELRIC rates for central office cross connections requiring regeneration. The FCC has clarified that incumbent LECs have an obligation to provide collocation on non-discriminatory terms

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	equipment (for Virtual Collocation) to the Qwest network is of sufficient length to require regeneration. Channel Regeneration will not be charged separately for Interconnection between a Collocation space and Qwest's network or between non-contiguous Collocation spaces of the same CLEC. Qwest shall charge for regeneration requested as a		to CLEC regeneration"), or to the Collocation space of another CLEC ("CLEC to CLEC regeneration") is of sufficient length to require regeneration based on the ANSI Standard for cable distance limitations. Channel Regeneration Charges shall not apply until the Commission approves a wholesale Channel Regeneration Charge. After approval of such charge, Channel Regeneration Charges shall be assessed for ILEC to CLEC and CLEC to CLEC regeneration on the same terms and conditions, and at the same rates. If CLEC requests Channel Regeneration in spite of the fact that it is no required to meet ANSI standards,	pursuant to section 251(c)(6) of the Act, and specifically applied this standard to central office cross connections in the *Fourth Report and Order*. While Qwest may theoretically permit Covad to place their own cross connection, Qwest places restrictions on this self-provisioning that render it technically and financially impossible in many circumstances.

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
	part of CLEC-to-CLEC Cross Connections under the FCC Access No. 1 tariff, Section 21.5.2 (EICT).[5] Cable distance limitations are addressed in ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B".		Qwest will provide such regeneration, and CLEC will pay the Channel Regneration Charge described herein.	
Issue 5	9.1.10 Intentionally left	See Qwest position set forth above	~~9.1.10 Channel Regeneration. Qwest's~~	Covad has proposed moving

[5] Ordered by the Washington Commission in Docket No. UT-043045, Order No. 04, (Synopsis ¶ 4, ¶ 86 and ¶ 87).

Issue Number/ ICA Section or Attachment Number/ Statement of Issue	Qwest Proposed Language	Qwest Position	Covad Proposed Language	Covad Position
9.1.10 Regeneration Requirements	blank.	relating to § 8.2.1.23.1.4.	~~design will ensure the cable between the Qwest provided active elements and the DSX will meet the proper signal level requirements. Channel Regeneration will not be charged separately for Interconnection between a collocation space and Qwest's network. Cable distance limitations are addressed in ANSI Standard T1.102-1993 "Digital Hierarchy – Electrical Interface; Annex B".~~	this issue to a new Section 8.3.1.9, and specifying that Qwest will not charge for regeneration for interconnection between any central office equipment. This would create consistency among various collocation arrangements and comply with FCC rules regarding CLEC to CLEC cross connections.
Issue 8 5.4.1 Payment Due Date	5.4.1 Amounts payable under this Agreement are due and payable within thirty (30) calendar Days after the date of invoice, or within twenty (20) calendar Days after receipt of the invoice, whichever is later (payment due date). If the payment	Qwest proposes that undisputed amounts payable under the contract be due within 30 days from the date of the invoice. This 30-day period, which applies to all CLECs,	5.4.1 Amounts payable for any invoice containing (1) line splitting or loop splitting products, (2) a missing circuit ID, (3) a missing USOC, or (4) new rate elements, new services, or new features not previously ordered by CLEC	Covad believes its slightly longer time-frames are reasonable for the items enumerated in its proposed language, and balances the interests of the

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	due date is not a business day, the payment shall be due the next business day.	balances a CLEC's need for sufficient time to analyze monthly bills with Qwest's right to timely compensation for services rendered. The 30-day due date is the industry standard and, because Qwest offers its bills in a variety of electronic formats that are readily searchable, that period provides a reasonable amount of time for CLECs to review their bills. Covad's proposal that different services have different due dates and that certain due dates revert to a shorter time period after 12	(collectively "New Products") (hereinafter collectively referred to as "Exceptions") are due and payable within forty-five (45) calendar Days after the date of invoice, or within twenty (20) calendar Days after receipt of the invoice, whichever is later (payment due date) with respect to the New Products Exception, the forty-five (45) Day time period shall apply for twelve (12) months. After twelve (12) months' experience, such New Products shall be subject to the thirty (30) Day time frame hereinafter discussed. Any invoice that does not contain any of the above Exceptions are due and payable within thirty (30) calendar Days after the date of invoice, or within twenty calendar Days after	Parties. The review of wholesale invoices is a complicated task, which will become more complicated as line sharing/line splitting arrangements become more commonplace. If the time-frames for payment are unreasonably short, as Qwest proposes, Covad's ability to audit Qwest invoices will be compromised.

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		months would create a systems and administrative nightmare, Furthermore, the parties' existing agreement – under which the parties have been operating since 1999 – provides that payments are due within 30 days from the invoice date. This issue was discussed at length during regional § 271 workshops, in which Covad actively participated, and ultimately was resolved with the Arizona SGAT language that specifies that amounts payable are due within 30 days	receipt of the invoice, whichever is later. If the payment due date is not a business day, the payment shall be due the next business day.	

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		from the invoice date. Finally, in the recent Commercial Line Sharing Agreement the parties agreed to a 30 day payment provision.		
Issue 8 5.4.2 Timing for Discontinuing Orders	5.4.2 One Party may discontinue processing orders for the failure of the other Party to make full payment for the relevant services, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within thirty (30) calendar Days following the payment due date. The Billing Party will notify the other Party in writing at least ten (10) business days prior to discontinuing the processing of orders for the	Qwest is entitled to timely payment for services rendered and to take remedial action if the risk of nonpayment is apparent. Qwest's proposal provides Covad with 30 days before the billed amount is due and another 30 days before Qwest would discontinue processing orders if Covad failed to pay, thereby giving Covad 60 days from	5.4.2 One Party may discontinue processing orders for the failure of the other Party to make full payment for the relevant services, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within ~~thirty (30)~~ sixty (60) calendar Days following the payment due date. The Billing Party will notify the other Party in writing at least ten (10) business days prior to discontinuing the	Discontinuing the processing of Covad's orders is a relatively drastic remedy. The additional time requested by Covad will avoid the need for additional agreements for payment arrangements, and will allow each party a reasonable amount of time to agree that certain amounts are disputed, or seek

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	relevant services. If the Billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the Billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. For order processing to resume, the billed Party will be required to make full payment of all charges for the relevant services not disputed in good faith under this Agreement. Additionally, the Billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to this section. In addition to other	the bill date until Qwest would discontinue processing. Taken together, Covad's proposals would prevent Qwest from taking action in cases of non-payment until 105 days after the payment due date because Covad seeks 45 days until payment is due for certain services plus an additional 60 days before Qwest could stop processing orders. Allowing Covad to continue to incur debt for months before Qwest can take appropriate action to protect itself is	processing of orders for the relevant services. If the Billing Party does not refuse to accept additional orders for the relevant services on the date specified in the ten (10) business days notice, and the other Party's non-compliance continues, nothing contained herein shall preclude the Billing Party's right to refuse to accept additional orders for the relevant services from the non-complying Party without further notice. For order processing to resume, the billed Party will be required to make full payment of all charges for the relevant services not disputed in good faith under this Agreement. Additionally, the Billing Party may require a deposit (or additional deposit) from the billed Party, pursuant to	other remedies under the agreement to either receive payment or maintain the processing of orders. The extension of this time frame will not lead to a significant increase of risk for Qwest.

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	remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief including injunctive relief and specific performance.	unreasonable. Again, this issue was discussed at length during the § 271 workshops, in which Covad actively participated, and which resulted in consensus language which provided for the 30 day period Qwest proposes here.	this section. In addition to other remedies that may be available at law or equity, the billed Party reserves the right to seek equitable relief including injunctive relief and specific performance	
Issue 8 5.4.3 Timing for Disconnecting Services	5.4.3 The Billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services provided under this Agreement within sixty (60) Calendar Days following the payment due date. The billed Party will pay the	Qwest is entitled to timely payment for services rendered and to take remedial action if risk of nonpayment is apparent. Qwest's proposal provides Covad with 30 days before the billed amount is due and another 60 days before Qwest would	5.4.3 The Billing Party may disconnect any and all relevant services for failure by the billed Party to make full payment, less any disputed amount as provided for in Section 5.4.4 of this Agreement, for the relevant services within <u>ninety (90)</u> calendar Days following the payment due date. The billed Party will pay the applicable	Covad's proposal affords 90 days after a payment is due until its services could be disconnected. Disconnection is a drastic remedy, and the impact that such disconnection will have on a CLECs' business, as well as innocent third party

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	applicable reconnect charge set forth in Exhibit A required to reconnect each resold End User Customer line disconnected pursuant to this paragraph. The Billing Party will notify the billed Party at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect any or all relevant services of the non-complying Party	disconnect service for nonpayment, thereby giving Covad 90 days before Qwest would disconnect the service. Taken together, Covad's proposals would prevent Qwest from taking action in cases of non-payment until 135 days after the payment due date because Covad seeks 45 days for certain services until payment is due plus an additional 90 days before Qwest could disconnect service. Allowing Covad to continue to incur debt for months before Qwest can take	reconnect charge set forth in Exhibit A required to reconnect each resold End User Customer line disconnected pursuant to this paragraph. The Billing Party will notify the billed Party at least ten (10) business days prior to disconnection of the unpaid service(s). In case of such disconnection, all applicable undisputed charges, including termination charges, shall become due. If the Billing Party does not disconnect the billed Party's service(s) on the date specified in the ten (10) business days notice, and the billed Party's noncompliance continues, nothing contained herein shall preclude the Billing Party's right to disconnect any or all relevant services of the non-complying Party	subscribers, should be balanced against Qwest's right to receive payment in full for services provided. The difference between the Parties' proposals (60 days) ensures that disconnection is never used as leverage in a billing dispute, and the increased risk of nonpayment for Qwest is relatively small.

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	without further notice. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the Billing Party will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the right to seek equitable relief, including	appropriate action to protect itself is unreasonable. Again, this issue was discussed at length during the § 271 workshops, in which Covad actively participated, and which resulted in consensus language which provided for the 60 day period Qwest proposes here.	without further notice. For reconnection of the non-paid service to occur, the billed Party will be required to make full payment of all past and current undisputed charges under this Agreement for the relevant services. Additionally, the Billing Party will request a deposit (or recalculate the deposit) as specified in Section 5.4.5 and 5.4.7 from the billed Party, pursuant to this Section. Both Parties agree, however, that the application of this provision will be suspended for the initial three (3) Billing cycles of this Agreement and will not apply to amounts billed during those three (3) cycles. In addition to other remedies that may be available at law or equity, each Party reserves the	

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	injunctive relief and specific performance.		right to seek equitable relief, including injunctive relief and specific performance.	