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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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DOCKET NO. T-00000A-97-0238

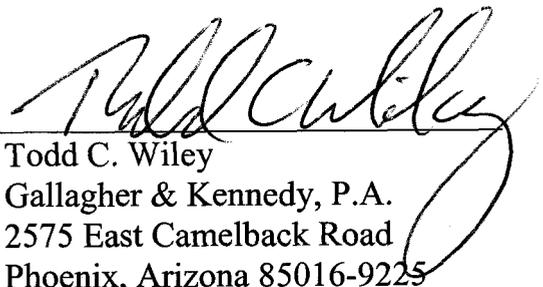
IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH SECTION 271 OF
THE TELECOMMUNICATIONS ACT
OF 1996

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) **NOTICE OF FILING**
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)

Covad Communications Company hereby files the Direct Testimony
of Michael Zulevic in this Docket .

Dated this 3rd day of May, 2001

GALLAGHER & KENNEDY, P.A.

BY: 
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ORIGINAL copy e-mailed and over-nighted
this 3rd day of May, 2001 to:

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Qwest Corporation
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CERTIFICATE OF SERVICE

I, Shannon Savage, hereby certify that an original and ten (10) copies of the Covad Communications Company's Objections to Qwest Corporation's Second Set of Data Requests, in Docket No. T-00000A-97-0238, were sent for filing via hand delivery on this 3rd day of May, 2001, to the following:

Arizona Corporation Commission
Docket Control Utilities Division
1200 West Washington Street
Phoenix, AZ 85007-2996

and a true and correct copy of the foregoing was served via United States Mail this 3rd day of May, 2001, on the following:

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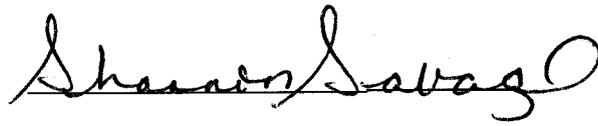
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and a true and correct copy of the foregoing document was served electronically on May 3, 2001 to each person on the e-mail distribution list for this docket provided by Staff of the Arizona Corporation Commission.

A handwritten signature in black ink, appearing to read "Shannon Savage". The signature is written in a cursive style with a large initial 'S' and a circular flourish at the end.

923597/12263-5

ORIGINAL

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IN THE MATTER OF U S WEST
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**DIRECT TESTIMONY OF
MICHAEL ZULEVIC
ON BEHALF OF
COVAD COMMUNICATIONS COMPANY**

May 3, 2001

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

I. INTRODUCTION

Q. PLEASE INTRODUCE YOURSELF.

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

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

A. Covad has asked me to present my recommendations to the Commission regarding Qwest's forecasting requirements, bona fide request process, certain of the general terms and conditions contained in Qwest's Statement of Generally Available Terms and Conditions (the "SGAT"), and other issues deferred by the parties to the workshop on general terms and conditions.

Although I am not a lawyer, as I understand it, the SGAT alone does not satisfy Qwest's obligations under the Telecommunications Act of 1996 (the "Act"). Rather, Qwest's current performance also must be taken into account when this Commission determines whether Qwest has satisfied the fourteen point competitive checklist contained in Section 271 of the Act. For this

reason, my testimony includes both comments on the actual language of the SGAT as well as performance-based issues relating to the subjects of forecasting, Qwest's bona fide request process, certain of the general terms and conditions contained in the SGAT, and other issues deferred by the parties to this workshop.

Q: IS THERE ANYTHING THAT IMPACTS YOUR ABILITY AT THIS TIME TO PROVIDE TESTIMONY RESPONSIVE TO QWEST'S AFFIDAVITS ON FORECASTING, THE BFR PROCESS, GENERAL TERMS AND CONDITIONS, AND OTHER ISSUES THAT THE PARTIES HAVE DEFERRED TO THIS WORKSHOP?

A: Yes. As is apparent from even the most cursory review of Qwest's affidavits and the SGAT "lite" filed in anticipation of this workshop, a number of issues that were referred to in this workshop are not addressed by Qwest. Accordingly, my comments are, of necessity, both limited and preliminary.

Q: CAN YOU IDENTIFY THOSE ISSUES THAT ARE NOT ADDRESSED BY QWEST ON WHICH COVAD MAY PROVIDE ADDITIONAL TESTIMONY IN THE FUTURE?

A: Yes. The issues that come immediately to mind include Qwest's special request ("SRP") and individual case basis ("ICB") processes. Qwest represented that it would provide the specific details associated with those processes, but no testimony filed by Qwest addresses the details for SRP and ICB.

Another issue is Qwest's CICMP, or change management, process. Although Qwest has committed to amend the SGAT to include the CICMP process, there is no indication in the SGAT "lite" attached to Mr. Brotherson's testimony that the SGAT has been amended to include the CICMP process, nor did Qwest provide any testimony on the CICMP process.

The parties also have raised numerous Section 2.3 issues, which were referred to in the workshops on general terms and conditions, but those issues are not addressed by any of Qwest's affiants.

There are some Exhibit C intervals that have not already been discussed by the parties. Yet again, Qwest provided no testimony on these intervals.

Finally, Qwest's testimony does not address the "productization" issue, and how and under what conditions CLECs may issue new product offerings.

II. FORECASTING

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

A. Qwest unilaterally has imposed forecasting requirements on CLECs at several places in its SGAT. Although forecasts appropriately may be required if Qwest can demonstrate an actual need for such forecast, any forecast requirement should

be carefully reviewed to ensure that the forecasting requirement not be converted into an opportunity by which Qwest may impose an unfair and anti-competitive burden on CLECs. The forecasts thus should be (1) as narrowly tailored as possible; (2) easy to complete; (3) submitted only on a bi-annual basis; (4) matched with an equally commensurate obligation on the part of Qwest to use the forecasts; and (5) subject to strict requirements designed to ensure the confidentiality of the information contained in the forecasts.

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

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

A good example of this is Covad's line sharing experience. Covad's forecasts indicated Covad's anticipated demand for both UNE loops and line shared loops. Despite that clear indication of demand, Qwest was unable or unwilling to roll out the training and personnel sufficient to meet Covad's line shared orders, despite being on notice of that demand. Specifically, Covad experienced several

problems with improperly, incorrectly or unconnected splitters. Had Qwest trained its line sharing personnel with an eye toward satisfaction of anticipated line share demand, these problems would not have occurred.

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

Q: WHAT DO YOU MEAN BY THE PHRASE “FORECASTS SHOULD BE AS NARROWLY TAILORED AS POSSIBLE”?

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

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

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

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

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

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

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

A: Several reasons, actually. First, the burden imposed on Covad to provide forecasts is substantial. Consequently, it would be unfair to require Covad to undertake this process on any more frequent basis. More importantly, a forecast provided at any interval more frequent than every six months would be of minimal value to Qwest in its network planning. Specifically, a forecast provided on a monthly or quarterly basis likely will be subject to revision and change by Covad – particularly given the fact that the tech economy remains in a state of flux. The forecast, therefore, will be of no value to Qwest when it purportedly seeks guidance and direction from CLECs in its network planning and expansion.

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

A: Absolutely. You see, according to Qwest, the sole purpose of requiring a forecast is to ensure either that there is sufficient capacity in Qwest's network to provision services, *see, e.g.*, SGAT § 7.2.2.8.4 ("Seven (7) months after submission of the initial forecast, Qwest will have the necessary capacity in place to meet the CLEC

forecast.”), or to permit Qwest adequate time to anticipate and plan for CLEC demand. Yet, while Covad adheres to its obligation to provide forecasts, it appears that Qwest wholly disregards those forecasts in its network planning. At no point in its relationship with Qwest has Covad seen any benefit from the submission of a forecast as far as Qwest’s preparation for, and ability to, meet Covad’s demand.

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

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

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

A. Yes. If Qwest is required to share its forecasts for its network growth, CLECs can intelligently market their products, as well as direct their demand, to areas where Qwest will have facilities available. Covad therefore recommends that the parties discuss a procedure by which Qwest will share its network plans with CLECs.

A forecast reciprocity requirement also would advance the business objectives of both Qwest and the CLECs. For example, if Qwest shared with Covad where and when it anticipates rolling out next generation digital loop carriers (“NGDLC”), Covad could provide Qwest with useful input on NGDLC deployment and assist in the development of remote terminal access. This type of cooperative arrangement not only would assist Qwest in complying with its obligations under the *UNE Remand Order*, but also would alleviate some of the problems Covad experiences with held orders/orders denied for service. Similarly, if Qwest shared with Covad its forecasted network planning, Qwest and Covad could work cooperatively to serve end users in a more timely (and therefore less frustrating) manner.

Q: DESCRIBE COVAD’S CONCERNS REGARDING CONFIDENTIALITY.

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

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

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

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

A: Like other CLECs, Covad would like clarification regarding SGAT § 7.2.2.8.6 and, specifically, the pro rata calculation. Covad is also interested in pursuing whether Qwest will agree to accommodate, act upon, and keep confidential voluntary CLEC forecasts for UNEs. Relatedly, to the extent Qwest will

accommodate and act upon voluntary UNE forecasts, Covad requests clarification as to whether Qwest will agree both to act on such forecasts and to provide CLECs with its forecasts to permit them to focus intelligently their marketing efforts.

III. BONA FIDE REQUEST PROCESS

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

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

Another area of concern is the fact that Qwest determines both whether the requested product or service is technically feasible and whether it is required by Act. With respect to the technical feasibility issue, the SGAT should be revised to include the assumption that the product or service requested is technically feasible and will be provided upon demand. The SGAT therefore should place the burden on Qwest to demonstrate that the requested product or service is not technically

feasible, as well as to delineate the method and time by which that issue will be raised and resolved. Absent the inclusion of these requirements, Qwest can abuse the discretion granted to it by this paragraph and deny the provision of a particular service or product, to the detriment of CLECs who, at best, face a significant delay until the technical feasibility issue is resolved, and at worst, have no ability under the SGAT to challenge that determination.

Similarly, permitting Qwest to determine in its sole discretion whether it is obligated by the terms of the Act to provide the service or product requested raises the same issues as does the technical feasibility issue. Specifically, Qwest can deny a BFR on the grounds it is under no legal obligation to provide the product or service requested. Not only does this provision ignore the fact that this Commission can impose unbundling obligations in addition to those enumerated by the FCC, but also it ensures that delay and, potentially, outright denial, will result.

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

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

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

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

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

IV. GENERAL TERMS AND CONDITIONS

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

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

Section 1.4

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

Section 1.7

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

Section 1.8

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

Section 2.3

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

imposes additional obligations and duties in situations in which the SGAT is silent.

Section 3

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

Section 5.1

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

Section 5.4

Section 5.4 describes the terms for payment for services provided under the SGAT. Covad demands that a provision be included that explicitly permits CLECs to challenge the amount charged and to require the provision by Qwest of all back up documentation in order to permit the resolution of the billing dispute. Additionally, the SGAT should be revised to make clear that a CLEC need not pay any disputed amounts pending resolution of that billing dispute, nor may Qwest assess any penalties, late payment charges, or interest on such disputed

amounts. CLECs should not be deprived of the benefit of retaining disputed amounts until the dispute has been resolved satisfactorily.

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

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

Covad objects to the requirement that CLECs provide a deposit to Qwest prior to the resumption of service under the SGAT. Such requirement is draconian and may preclude a CLEC from seeking and obtaining service and products under the SGAT. Additionally, to the extent that a deposit may be required, Covad has several unanswered questions regarding whether a deposit always will be required; under what circumstances will a deposit be required; how the amount of the deposit will be determined; where the deposit will be held; the amount and

terms under which interest on the deposit shall accrue; and the circumstances under which the deposit requirement will be augmented, decreased or terminated.

Section 5.8

Section 5.8, Limitation of Liability, also is cause for concern to Covad. Specifically, this particular provision limits Qwest's liability to Covad for any Qwest failure of performance/Qwest breach of the SGAT to "the total amount that is or would have been charged to the other Party by such breaching Party for service(s) or function(s) not performed or improperly performed, including without limitation direct damages for loss of or damage to the CLEC's collocated equipment located within collocation space." Although I am not a lawyer, it is clear to me that Qwest seeks by this provision to preclude CLECs from recovering damages for injuries or harms that may be remedied via self-executing penalties imposed pursuant to wholesale service quality standards, performance assurance/post-entry performance plans, or through the assertion of any and all other legal rights and remedies available to CLECs.

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

Section 18

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

Other questions I have, and which are unanswered by Qwest's SGAT lite and its prefiled testimony, include the method by which inconsistent CLEC and Qwest data will be reconciled; whether a party may use the information compiled as a result of the audit in proceedings involving Qwest performance issues; and the intent and purpose of Section 18.3 regarding party affiliates.

Q. Q: DOES THIS CONCLUDE YOUR TESTIMONY?

A. A: Yes it does.

ORIGINAL copy e-mailed and over-nighted
this 3rd day of May, 2001 to:

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and a true and correct copy of the foregoing was sent via United States Mail, postage prepaid, on this 3rd day of May, 2001, to the following:

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and a true and correct copy of the foregoing document was served electronically on May 3, 2001 to each person on the e-mail distribution list for this docket provided by Staff of the Arizona Corporation Commission.

A handwritten signature in cursive script that reads "Shannon Savage". The signature is written in black ink and is positioned centrally on the page.

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