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2005 JUL 27 1P 4: 31  
July 26, 2005

AZ CORP COMMISSION  
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Via UPS Overnight Delivery

Arizona Corporation Commission  
Docket Control  
1200 West Washington  
Phoenix, AZ 85007

Re: **Docket No. T-03632A-04-0425**  
T-01051B-04-0425

Dear Sir/Madam:

Enclosed please find the original and 15 copies of Covad's Reply in Support of Its Notice of Supplemental Authority in the above referenced docket. The appropriate cover sheet is also enclosed.

Please feel free to contact me if you have any questions.

Very truly yours,

  
Lynn Hankins

Encls.

cc: Service list (w/encls.)

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BEFORE THE ARIZONA CORPORATION COMMISSION

2005 JUL 27 P 4: 37

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T-03632A-04-0425

KRISTIN K. MAYES

T-01051B-04-0425

DOCKET NO. T-03632A-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 )  
)

**COVAD'S REPLY IN SUPPORT OF  
ITS NOTICE OF SUPPLEMENTAL  
AUTHORITY**

Dieca Communications, Inc. d/b/a Covad Communications Company ("Covad")  
replies to Qwest Corporation's ("Qwest") response to Covad's Notice of Supplemental  
Authority ("Notice") as follows:

In its Notice, Covad brings to the Commission's attention an order of the Missouri  
Public Service Commission in which that Commission held that Verizon, a Regional Bell  
Operating Company, was required to provide access to section 271 network elements at  
interim rates in the context of a section 252 arbitration. See, *Southwestern Bell  
Telephone d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved  
Issues for a Successor Interconnection Agreement*, Case No. TO-2005-0336, Arbitration  
Order, (July 11, 2005).

In its response, Qwest argues the Missouri decision is inapplicable. Qwest  
contends that in the Missouri case there was rate uncertainty because Verizon refused to  
set any rates for section 271 elements whereas here Qwest asserts that there is rate  
certainty because the parties in this docket have entered into a stand alone agreement

“under which Qwest provides switching and transport at agreed rates.” Qwest’s argument is demonstrably false for two reasons.

First, the stand alone agreement Qwest relies upon is the Master Services Agreement for the provision of a Qwest product known as Qwest Platform Plus. (“QPP Agreement”). The QPP Agreement does not allow Covad to obtain *dedicated* transport<sup>1</sup> from Qwest on an unbundled basis and, in fact, does not address *dedicated* transport at all. Rather, the QPP makes available to Covad only local switching and *shared* transport.<sup>2</sup> In other words, those elements (only one of which is at issue in the arbitration) are only available to Covad as part of a bundled product that includes the loop element. The QPP Agreement is explicit on this bundling requirement:

QPP services shall consist of the Local Switching Network . . . and Shared Transport Network Element in combination. . . .

As part of the QPP service, Qwest shall as described below combine the Local Switching and Shared Transport Network Elements with the Loop provided pursuant to the terms and conditions of CLEC’s ICAs. (emphasis added)

QPP Agreement, Exhibit 1, p. 1, sections 1.1 and 1.2.

It is clear that the QPP Agreement provides absolutely no rate certainty to Covad with respect to the network elements – loops and dedicated transport -- Covad actually desires to obtain from Qwest. Covad has no need to acquire just switching or shared transport from Qwest in combination only. Rather, Covad has an interest in obtaining loops and dedicated transport under section 271 of the Act. Neither of these network elements is available to Covad under the QPP Agreement.

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<sup>1</sup>Dedicated transport is defined in the SGAT as “Qwest provided digital transmission path between locations designated by CLEC to which CLEC is granted exclusive use. Such locations may include, but not be limited to, Qwest Wire Centers, Qwest End Office Switches, and Qwest Tandem Switches.”

<sup>2</sup> Shared transport is defined in the SGAT as “interoffice transmission facilities shared by more than one Carrier, including Qwest, between End Office Switches, between End Office Switches and tandem switches (local and access tandems), and between tandem switches) on a bundled basis.”

Second, Qwest attempts to distinguish the Missouri decision on grounds that it is devoid of any analysis of whether section 271 gives state commissions decision-making authority. This is not true. After outlining the detailed positions of the parties, the Missouri Commission adopts the position of the CLEC coalition, concluding:

[T]he Commission concurs that the Coalition's compromise position – rates patterned on the FCC's transition period rates for declassified UNEs – constitutes a suitable interim rate structure for § 271 UNEs. The Final Arbitrator's Report is so modified and the parties are directed to use such rates in their ICAs.

The Missouri Commission necessarily concluded it had authority to order the unbundling of section 271 elements in the context of a section 252 arbitration, otherwise it would not have set an interim rate for these elements.

For these reasons, the arguments in Qwest's response should be rejected out of hand. Covad urges the Commission to adopt Covad's interconnection agreement language with respect to unbundling of network elements under section 271 of the Act.

RESPECTFULLY SUBMITTED,

Dated: July 26, 2005

Dieca Communications, Inc.

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## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of **COVAD'S REPLY IN SUPPORT OF ITS NOTICE OF SUPPLEMENTAL AUTHORITY** was electronically mailed this 26<sup>th</sup> day of July, 2005, and mailed by U.S. Mail, postage prepaid, on July 27, 2005 to the following:

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