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BEFORE THE ARIZONA CORPORATION COMMISSION

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2005 JUL 25 P 3:06

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

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

**QWEST CORPORATION'S RESPONSE TO COVAD COMMUNICATION  
COMPANY'S NOTICE OF SUPPLEMENTAL AUTHORITY**

Qwest Corporation ("Qwest") hereby provides this response to Covad Communications Company's ("Covad") notice of supplemental authority filed on July 19, 2005. In its notice, Covad provides the Commission with a recent order from the Missouri Public Service Commission (the "*Missouri SBC Order*") in an arbitration involving Southwestern Bell Telephone, L.P. and asserts that the order supports Covad's position that the interconnection agreement ("ICA") between Qwest and Covad should include network unbundling obligations imposed by Section 271 of the Telecommunications Act of 1996 (the "Act"). The order does not support Covad's position or in any way alter the compelling authority established by the orders from six other state commissions that have rejected Covad's request to include Section 271 obligations in the ICA.

First, a basic premise underlying the *Missouri SBC Order* is that SBC would not make available to competitive local exchange carriers ("CLECs") at agreed rates certain Section 271 elements that the FCC has de-listed from Section 251. Thus, the Missouri Commission ordered

1 the parties to include in the interconnection agreement "transitional prices" the FCC adopted for  
2 those elements, stating that doing so "will provide certainty and encourage SBC and the CLECs  
3 to expeditiously engage in negotiations toward establishing permanent rates for § 271 UNEs."  
4 *Missouri SBC Order* at 30.

5 Here, by contrast, Qwest is providing certain Section 271 elements, including elements  
6 addressed in the *Missouri SBC Order*, to Covad at fixed rates set forth in a commercial  
7 agreement between the parties. Specifically, in Arizona and other states in Qwest's region,  
8 Qwest and Covad have entered into Qwest Platform Plus agreements under which Qwest  
9 provides switching and transport at agreed rates. Thus, the absence of rate certainty and the  
10 potential unavailability of switching and transport that underlie the *Missouri SBC Order* do not  
11 exist here. Indeed, in the *Triennial Review Remand Order ("TRRO")*<sup>1</sup> in which the FCC  
12 established the transitional rates that the Missouri Commission adopted in the *Missouri SBC*  
13 *Order*, the FCC emphasized that the transitional structure does not apply where, as here, parties  
14 have negotiated commercial agreements: "The transition mechanism also does not replace or  
15 supersede any commercial arrangements carriers have reached for the continued provision of  
16 transport facilities or services." *TRRO* at ¶ 145.

17 Second, the *Missouri SBC Order* is devoid of any analysis of whether Section 271 gives  
18 state commissions decision-making authority relating to the scope or terms of unbundling  
19 obligations under that section. The order neither analyzes the language in Section 271 nor the  
20 judicial and state commission decisions, discussed in Qwest's briefs, establishing that states have  
21 no such authority. Equally significant, the Missouri Commission did not address whether state  
22 commissions have statutory authority in a Section 252 arbitration such as this to impose  
23 obligations unrelated to those set forth in Sections 251(b) and (c). As Qwest demonstrates in its  
24 briefs and as other state commissions in these Qwest/Covad arbitrations have ruled, state

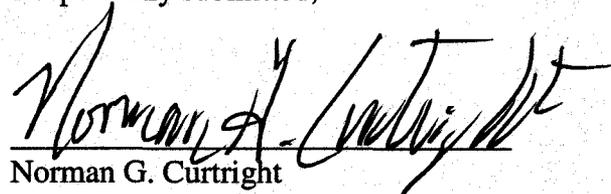
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25 <sup>1</sup> Order on Remand, *In the Matter of Review of Unbundled Access to Network Elements, Review of Section 251*  
26 *Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, WC Docket No. 04-313  
(FCC rel. February 4, 2005).

1 commissions only have arbitration authority to impose terms and conditions relating to Sections  
2 251(b) and (c). The Missouri Commission provides no legal analysis that suggests otherwise.  
3 In sum, the *Missouri SBC Order* is factually distinguishable from this case and does not include  
4 any legal analysis that contradicts the unanimous conclusion reached by six other state  
5 commissions in arbitrations identical to this one.

6 DATED: July 25, 2005

7 Respectfully submitted,

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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that I have served a copy of **Qwest Corporation's Response to Covad**  
5 **Communications Company's Notice of Supplemental Authority** on July 25, 2005 to the  
6 following parties **via electronic and overnight mail:**

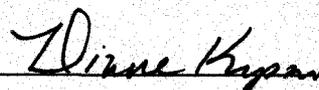
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