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**BEFORE THE ARIZONA CORPORATION COMMISSION**

JEFF HATCH-MILLER  
Chairman  
WILLIAM MUNDELL  
Commissioner  
MARC SPITZER  
Commissioner  
MIKE GLEASON  
Commissioner  
KRISTIN MAYES  
Commissioner

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AZ CORP COMMISSION  
DOCUMENT CONTROL

**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-01051B-04-0425  
T-03632A-04-0425**

**STATEMENT OF QWEST  
CORPORATION REGARDING FCC  
DECISION AND MOTION FOR  
PROCEDURAL CONFERENCE**

On August 26, 2005, the Arbitrator took note of the adoption by the Federal Communications Commission ("FCC") on August 5, 2005, of a Report and Order in its Docket CC 05-150, that, among other things, would eliminate facilities sharing requirements on facilities-based wireline broadband Internet access service providers (the "FCC Decision"). The FCC Decision was announced by a news release, a copy of which is attached hereto as "Exhibit A ("News Release")." The Arbitrator ordered the parties to file statements regarding the impact on this proceeding. The Arbitrator recognizes that the text of the FCC Decision has not yet been issued.<sup>1</sup>

Qwest Corporation ("Qwest") states that the FCC Decision potentially affects this proceeding profoundly. Covad provides wireline broadband Internet access services, now

<sup>1</sup> The News Release itself has no legal effect. The news release contains the caption: "This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v FCC, 515 F 2d 385 (DC Cir. 1974)."

1 litigating in this proceeding, including the retirement of copper facilities, the propriety of  
2 including terms relating to network elements provided under Section 271 in an Interconnection  
3 Agreement, the authority of state commissions to impose unbundling obligations under Section  
4 271 of the Act, and the authority of the Arizona Corporation Commission to create under state  
5 law unbundling requirements that the FCC has rejected, should all be considered in the light of  
6 the FCC Decision. More fundamentally, the FCC Decision appears to change the very  
7 regulatory category of the respective services provided by Qwest and Covad, raising jurisdiction  
8 questions.

9       The News Release describes the FCC as having “adopted policies that will bring more  
10 and better broadband services to consumers by eliminating facilities sharing requirements on  
11 facilities-based wireline broadband Internet access service providers.” Further, the Commission  
12 stated, “. . . the Commission puts wireline broadband Internet access service, commonly  
13 delivered by digital subscriber line (DSL) technology, on an equal regulatory footing with cable  
14 modem service.” The News Release also states:

15  
16               Specifically, the Commission determined that wireline broadband Internet  
17 access services are defined as information services functionally integrated with a  
18 telecommunications component. In the past the Commission required facilities-  
19 based providers to offer that wireline broadband transmission component  
20 separately from their Internet service as a stand-alone service on a common-  
21 carrier basis, and thus classified that component as a telecommunications service.  
22 Today the Commission eliminated this transmission component sharing  
23 requirement, created over the past three decades under very different  
24 technological and market conditions, finding it caused vendors to delay  
25 development and deployment of innovations to consumers.  
26

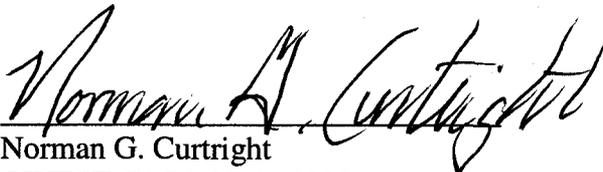
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The changes wrought by the FCC Decision appear potentially to affect the essential regulatory framework governing Qwest and Covad in their respective businesses and rights and duties to one another.

However, as the News Release does not provide the details of the Commission's ruling, and is not official notice of the ruling in any event, it is premature to speculate about just what impact the Decision itself will have. In these circumstances, Qwest respectfully suggests that further deliberation is in order, and that Qwest is not able to fully determine and state its position on the impact of the FCC Decision in this matter until after the FCC has released its written Report and Order.

For these reasons, Qwest respectfully moves the Arbitrator for an order convening a procedural conference soon in this matter.

Respectfully submitted, this 26<sup>th</sup> day of August, 2005.



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*Attorneys for Qwest Corporation*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I have served a copy of **Statement of Qwest Corporation**  
3 **Regarding FCC Decision and Motion for Procedural Conference** on August 26, 2005 to the  
4 following parties **via electronic and overnight mail:**

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# **EXHIBIT A**



# NEWS

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News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.  
See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

FOR IMMEDIATE RELEASE:  
August 5, 2005

NEWS MEDIA CONTACT:  
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## **FCC Eliminates Mandated Sharing Requirement on Incumbents' Wireline Broadband Internet Access Services**

### *Decision Places Telephone and Cable Companies on Equal Footing*

Washington, D.C. – The Federal Communications Commission today adopted policies that will bring more and better broadband services to consumers by eliminating facilities sharing requirements on facilities-based wireline broadband Internet access service providers.

The changes will enable wireline broadband Internet access providers to respond quickly to consumer demand with efficient, innovative services and spur more vigorous head-to-head competition with broadband services provided over other platforms. The Commission's action responds to market and technological changes marked by growth in the use of the Internet for communications and the availability of Internet service from multiple broadband pipelines, including cable, wireless, satellite, and power line networks.

The Report and Order adopted by the Commission puts wireline broadband Internet access service, commonly delivered by digital subscriber line (DSL) technology, on an equal regulatory footing with cable modem service, currently the market leader. This approach is consistent with a recent U.S. Supreme Court decision upholding the Commission's light regulatory treatment of cable modem service. Consistent regulatory treatment of competing broadband platforms will enable potential investors in broadband network platforms to make market-based, rather than regulation-driven, investment and deployment decisions.

Specifically, the Commission determined that wireline broadband Internet access services are defined as information services functionally integrated with a telecommunications component. In the past, the Commission required facilities-based providers to offer that wireline broadband transmission component separately from their Internet service as a stand-alone service on a common-carrier basis, and thus classified that component as a telecommunications service. Today, the Commission eliminated this transmission component sharing requirement, created over the past three decades under very different technological and market conditions, finding it caused vendors to delay development and deployment of innovations to consumers.

To ensure a smooth transition, the Order requires that facilities-based wireline broadband Internet access service providers continue to provide existing wireline broadband Internet access transmission offerings, on a grandfathered basis, to unaffiliated ISPs for one year. The Order

also requires facilities-based providers to contribute to existing universal service mechanisms based on their current levels of reported revenues for the DSL transmission for a 270-day period after the effective date of the Order or until the Commission adopts new contribution rules, whichever occurs earlier. If the Commission is unable to complete new contributions rules within the 270-day period, the Commission will take whatever action is necessary to preserve existing funding levels, including extending the 270-day period or expanding the contribution base.

The Order also allows wireline providers the flexibility to offer the transmission component of the wireline broadband Internet access service to affiliated or unaffiliated ISPs on a common-carrier basis, a non-common carrier basis, or some combination of both. Some rural incumbent local exchange carriers, or LECs, have indicated their members may choose to offer broadband Internet access transmission on a common carrier basis.

In a Notice of Proposed Rulemaking, the Commission seeks comment on whether it should develop a framework for consumer protection in the broadband age – a framework that ensures that consumer protection needs are met by *all* providers of broadband Internet access service, regardless of the underlying technology.

Action by the Commission, XXXXXXXX, (FCC 05-xxx).

Wireline Competition Bureau Staff Contacts: Terri Natoli and William Kehoe, (202) 418-1580

-FCC-

News about the Federal Communications Commission can also be found  
on the Commission's web site [www.fcc.gov](http://www.fcc.gov).