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BEFORE THE ARIZONA CORPORATION 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 REPLY
TO STAFF'S RESPONSE
RELATING TO PHASE II
PROCEEDING

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Qwest Corporation ("Qwest") respectfully requests leave to submit this reply to Staff's Response to the Joint Brief of Qwest and Covad Communications Company ("Covad") Relating to Phase II Proceeding and requesting Approval of Amendment to Interconnection Agreement.

I. Introduction

While the Procedural Order does not provide for a reply brief, Staff's Response raises two issues that require a reply. First, Staff states that it has no objection to deferring the Phase II pricing proceeding, provided that Qwest will make available to other carriers both the Qwest-Covad Price Flex Agreement and *Triennial Review Remand Order*¹ Amendment ("TRRO Amendment") that Qwest and Covad provided with their joint brief filed December 20, 2006. This reply answers Staff's implicit question concerning whether Qwest will make these

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

1 agreements available to other carriers. Second, Staff's Response appears to assume that Qwest
2 and Covad submitted the Price Flex Agreement in order to obtain the Commission's review and
3 approval of the agreement under Section 252(e)(1) of the Telecommunications Act of 1996 ("the
4 Act"). That assumption is incorrect, and it is necessary to clarify that the Price Flex Agreement,
5 which addresses an interstate service and is not an "interconnection agreement," is not subject to
6 the filing and review process established in Section 252(e)(1).

7 To permit clarification of both of these issues, Qwest respectfully requests leave to file
8 this reply.

9 II. Discussion

10 A. *Qwest Will Make The Price Flex Agreement And The TRRO Amendment* 11 *Available To Other Carriers.*

12 The Price Flex Agreement and the *TRRO* Amendment will be available to other carriers.
13 The Price Flex Agreement will be available for adoption by other carriers under Qwest's FCC
14 No. 1 Tariff. Qwest will file a summary of the Agreement with the FCC as a contract tariff.
15 That contract tariff will become part of Qwest's FCC No. 1 Tariff. Carriers will then be able to
16 opt into that contract tariff in accordance with the terms of Qwest's FCC No. 1 Tariff.

17 The purpose of the *TRRO* Amendment is to add provisions to the Qwest-Covad arbitrated
18 interconnection agreement ("ICA") that will implement the FCC's rulings in the *TRRO*. Upon
19 approval by the Commission, the amendment will become part of the arbitrated ICA, and
20 competitive local exchange carriers ("CLECs") will be able to opt into the entire ICA, including
21 the amendment, pursuant to Section 252(i).² Thus, in response to Staff's inquiry, the *TRRO*

22 ² Section 252(i) permits CLECs to opt into entire ICAs, not individual sections or provisions.
23 See Second Report and Order, *In the Matter of Review of the Section 251 Unbundling*
24 *Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC 04-164 (July
25 13, 2004)(adopting "all-or-nothing rule" under Section 252(i)). Accordingly, to benefit from the
26 *TRRO* Amendment, CLECs will be required to opt into the entire Qwest-Covad ICA, not just the
amendment.

While Qwest submitted the arbitrated ICA to the Commission for review and approval, it
expressly reserved its right to challenge the lawfulness of the rulings in the Arbitration Order

1 amendment will be available to other carriers.

2 **B. *The Filing And Review Requirements In Section 252 Do Not Apply To The Price Flex***
3 ***Agreement.***

4 In its Response, Staff states that it has reviewed the Price Flex Agreement and has
5 concluded that the Agreement is "consistent with the Act and the Arizona Administrative Code."
6 Staff Response at 3. This statement appears to assume that the Commission has authority to
7 review and approve the Price Flex Agreement under the Act. If that is Staff's intent, the
8 assumption is incorrect.

9 As Staff acknowledges in its Response, the Price Flex Agreement sets forth the terms
10 under which Covad is permitted "to purchase *interstate* high-capacity transport from Qwest."
11 Staff Response at 3 (emphasis added). Qwest provided the Agreement with the joint Qwest-
12 Covad brief filed on December 20, 2006 only because Staff had requested to see the Agreement
13 in deciding its position concerning whether to defer to Phase II. Qwest stated clearly that
14 because the Agreement is for interstate services, it was being submitted only for informational
15 purposes and not for approval by the Commission:

16 For informational purposes only, the parties are attaching a copy of [the
17 Price Flex Agreement] to this brief Because the contract involves
18 interstate services, not intrastate facilities or services, the Commission is
19 without authority over the contract and the parties are therefore not
submitting the contract to the Commission for approval. Qwest-Covad
Joint Brief at 2.

20 It is of course undisputed that the Commission does not have authority over interstate
21 services and that such authority rests exclusively with the FCC.³ For this reason, the

22 requiring that the ICA include provisions under which Covad can obtain access to network
23 elements under Section 271 and Arizona law. Qwest is currently challenging those rulings and
24 the Commission's ruling mandating cost-based TELRIC ("total element long run incremental
25 cost") rates for Section 271 elements in an action filed with the United States District Court for
Arizona. Qwest reiterates here that it is expressly reserving its right to challenge the
Commission's rulings on these issues.

26 ³ See *Vonage Holdings Corp. v. New York State Public Service Comm'n*, 04 Civ. 4306 (DFE),

1 Commission does not have jurisdiction over the Agreement, as the Agreement relates exclusively
2 to an interstate service.

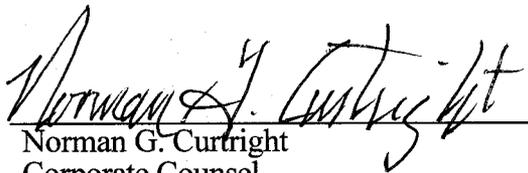
3 In addition, per Section 252(e)(1), the review and approval authority of state
4 commissions is expressly limited to "interconnection agreements." The FCC has defined the
5 "interconnection agreements" subject to this review as being limited to "only those agreements
6 that contain an ongoing obligation relating to section 251(b) or (c) . . ." ⁴ The obligations listed in
7 Sections 251(b) and (c) do not encompass the interstate high-capacity transport that is the subject
8 of the Price Flex Agreement and, accordingly, the Agreement is not an "interconnection
9 agreement" and is not subject to the Commission's review and approval authority Section
10 252(e)(1).

11 III. Conclusion

12 For the reasons stated here and in the Qwest-Covad Joint Brief, the Phase II pricing
13 proceeding should be deferred. Further, there should be no determinations or findings by the
14 Commission with respect to the Price Flex Agreement.

15 DATED this 7th day of February, 2007.

16 QWEST CORPORATION

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25 2004 WL 3398572, *1 (S.D.N.Y. July 16, 2004).

26 ⁴ Memorandum Opinion and Order, *Qwest Communications Int'l Inc. Petition for Declaratory Ruling*, FCC 02-276, WC Docket No. 02-89 ¶ 8 n.26 (FCC Oct. 4, 2002) ("*Declaratory Order*").

1 Original and 13 copies of the foregoing
2 were filed this 7th day of February 2007 with:

3 Docket Control
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7 Copies of the foregoing hand-delivered/mailed/emailed
8 this 7th day of February 2007 to:

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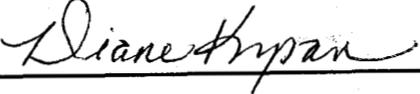
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