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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

KRISTIN K. MAYES - Chairman  
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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

SEP 21 2009

DOCKETED BY [Signature]

IN THE MATTER OF THE STAFF'S REQUEST  
FOR APPROVAL OF COMMERCIAL LINE  
SHARING AGREEMENT BETWEEN QWEST  
CORPORATION AND COVAD  
COMMUNICATIONS COMPANY.

DOCKET NO. T-03632A-04-0603

DOCKET NO. T-01051B-04-0603

PROCEDURAL ORDER

**BY THE COMMISSION:**

In Decision No. 70749 (February 12, 2009) the Arizona Corporation Commission ("Commission") denied Qwest Corporation's ("Qwest") Motion to Dismiss the above-captioned matter and directed the Hearing Division to conduct further proceedings to determine if Covad Communications Company ("Covad") uses the high frequency portion of the loop ("HFPL") solely to provide information services.

On April 13, 2009, Covad filed a "Notice of Filing Compliance with Decision No. 70749." Therein, Covad states that it uses the HFPL to provide telecommunications services (data and transmission services), and that the FCC, through its *Wireline Broadband Order*, allows carriers to elect to provide their broadband transmission service as a telecommunications service.

On April 13, 2009, Qwest filed Comments in Response to the Commission's Order. Qwest states that while it does not agree with Decision No. 70749's distinction between information service and telecommunications service for the purpose of determining whether the Commission has jurisdiction to review line sharing agreement, Qwest believes that Covad is using line sharing to provide an information service. Qwest asserts the FCC has stated that wireline broadband Internet access services and wireline broadband technologies used to provide Internet access services are "information services," not "telecommunications services."

1 On April 20, 2009, Covad filed Response Comments, and provided its current retail prices  
2 that it makes available to the public as support for its assertion that it is acting as a common carrier  
3 providing telecommunications services over the HFPL.

4 On April 27, 2009, Qwest filed Reply Comments, and argued that Covad has not  
5 demonstrated facts sufficient to show that its use of line sharing is to provide telecommunications  
6 services as a common carrier.

7 Qwest's and Covad's filings in response to Decision No. 70749 have assisted in explaining  
8 the question raised in the Decision about how Covad is utilizing the HFPL. There remains, however,  
9 a dispute about whether Covad's use is an "information" or "telecommunications" service. It appears  
10 also that Qwest continues to believe that the distinction is not necessarily germane to the ultimate  
11 question of whether the line sharing agreement is required to be filed with the Commission for  
12 review. Furthermore, the Commission's Utilities Division ("Staff") has not had an opportunity to  
13 comment on the distinction made in Decision No. 70749 between "information" and  
14 "telecommunications" services as they relate to the filing of line sharing agreements, nor has Staff  
15 commented on the additional specific information provided by Covad or Qwest's response thereto.

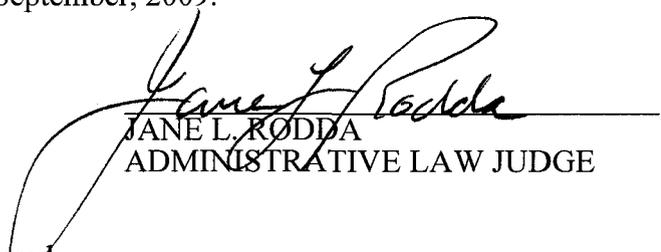
16 Resolution of this matter will benefit from a Procedural Conference to discuss the legal and  
17 factual claims raised as a result of the additional information, including but not necessarily limited to,  
18 whether Covad's claim that it is using the HFPL to provide telecommunications services as a  
19 common carrier has a bearing on whether the Commission has jurisdiction over the line sharing  
20 agreement; whether the distinction in the Decision between "information" and "telecommunication"  
21 services is relevant to determining Commission jurisdiction; and whether there are issues of fact that  
22 would require an evidentiary hearing.

23 IT IS THEREFORE ORDERED that a **Procedural Conference** shall commence on **October**  
24 **13, 2009, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's Tucson offices,  
25 **Room 222, 400 West Congress, Tucson, Arizona. Parties desiring to appear telephonically shall**  
26 **contact the Hearing Division (602) 542-4250 prior to the proceeding for instructions on**  
27 **telephonic participation.**

28 ...

1 IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter,  
2 amend, or waive any portion of this Procedural Order by subsequent Procedural Order or by ruling at  
3 hearing.

4 DATED this 18<sup>th</sup> day of September, 2009.

5  
6   
7 JANE L. RODDA  
ADMINISTRATIVE LAW JUDGE

8 Copy of the foregoing mailed/delivered  
9 this 18<sup>th</sup> day of September, 2009, to:

10 Michael W. Patten  
11 Roshka DeWulf & Patten, PLC  
12 One Arizona Center  
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14 Suite 800  
15 Phoenix, Arizona 85004

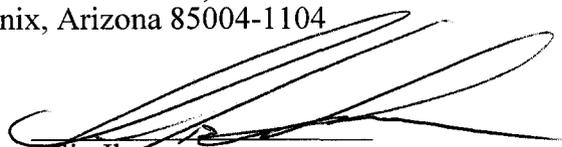
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