

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04B-160T

IN THE MATTER OF PETITION OF QWEST CORPORATION FOR ARBITRATION OF AN
INTERCONNECTION AGREEMENT WITH COVAD COMMUNICATIONS COMPANY
PURSUANT TO 47 U.S.C. § 252(B).

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
NOTICING EXTENDED DECISION DEADLINE,
SCHEDULING HEARING, ESTABLISHING
PROCEDURAL SCHEDULE, GRANTING
REQUEST, AND ENTERING PROTECTIVE ORDER**

Mailed Date: May 4, 2004

I. STATEMENT

1. On April 6, 2004, Qwest Corporation (Qwest) file a Petition for Arbitration of an interconnection agreement with Covad Communications Company (Covad). The Petition for Arbitration (Petition) commenced this proceeding.

2. On April 16, 2004, Staff of the Commission (Staff) filed its intervention of right and request for hearing. The intervention period expired on April 16, 2004. No other interventions were filed. Thus, the parties in this proceeding are Qwest, Covad, and Staff (collectively, the parties).

3. This matter is assigned to the undersigned Administrative Law Judge (ALJ) for hearing. The Commission will issue an initial decision. *See* Decision No. C04-0393.

4. Covad's response to the Petition was filed on May 3, 2004.

5. On April 22, 2004, pursuant to Decision No. R04-0405-I, the ALJ held a prehearing conference. At the prehearing conference, Qwest stated that it realized that the Commission's decision in this proceeding would be issued after the July 29, 2004, deadline if the Commission adopted the procedural schedule under discussion during the prehearing conference. In order to accommodate the procedural schedule discussed below, Qwest stated that it would not raise an objection based on the date of the Commission decision in this matter provided that decision issues on or before August 13, 2004.¹ In effect, Qwest "extended" the deadline for the Commission decision in this proceeding by 15 calendar days. With the additional time now available, the procedural schedule adopted below is tenable and will be adopted.

6. The following procedural schedule and hearing dates will be adopted: (a) on or before **May 7, 2004**, Qwest and Covad will file a preliminary joint issue matrix in the form discussed below; (b) on or before **May 18, 2004**, each party will file its direct testimony and exhibits; (c) on or before **May 28, 2004**, each party will file its answer testimony and exhibits; (d) on or before **June 14, 2004**, the parties will file a joint issue matrix in the form discussed below; (e) on or before **June 17, 2004**, by letter Qwest will identify the witnesses to be heard on June 21, 2004 (*see* note 2); (f) the hearing in this proceeding will be held on **June 21 and 22, 2004**;² and (g) on or before **July 2, 2004**, the parties will file their post-hearing statements of position, to which (absent further order) no response will be permitted.

¹ Qwest will be directed to file, on or before May 18, 2004, a formal notice to that effect.

² At the prehearing conference Qwest stated that one of its counsel would not be available on June 22, 2004. The parties agreed to make an effort to have the witnesses for which this counsel is responsible heard on June 21, 2004. To accommodate Qwest's request, the parties and pertinent witnesses should be prepared to continue the hearing into the evening of June 21, 2004.

7. Each joint issue matrix will address only unresolved issues.³ For each unresolved issue a joint issue matrix must contain the following: the language each party proposes for adoption and the rationale supporting the proposal. The specific proposals must be presented side-by-side for ease of comparison.

8. Daily transcript will be prepared in this proceeding. Qwest and Covad will each bear 50 percent of the transcript's cost. Qwest will be responsible for making the necessary arrangements with the court reporters.

9. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-77 will govern discovery in this matter. Should a party wish to do so, it may file a motion to modify the response time or procedures.

10. With the exception of confidential material, the testimony, exhibits, and joint issue matrices shall be served on all parties by electronic mail on the dates stated in ¶ 6, *supra*. With the exception of confidential material, the discovery requests and discovery responses shall be served by electronic mail. A paper copy of any document served by electronic mail must follow the electronic service for service to be effected and effective. The paper copy may be mailed or hand-delivered, provided the mailing or hand-delivery occurs on the same day as the electronic service.

11. Confidential materials will be served by hand-delivery of paper copy.

12. Page and line references to testimony and exhibits in direct examination, in cross-examination, and in filings (*e.g.*, motions, statements of position) shall be to the paper copy.

³ As stated above, Qwest and Covad will file a preliminary joint issue matrix on May 4, 2004. The three parties will file a final joint issue matrix on June 14, 2004.

13. Copies of all discovery requests and discovery responses must be served on all counsel. Discovery requests and responses are not to be filed with the Commission and are not to be served on the Commission advisors (including Commission counsel) identified by Staff in the Rule 9(d) Notice filed in this docket.

14. On page 34 of the Petition, Qwest requested that the Commission enter a protective order in this matter. *See* Rule 4 CCR 723-16-3. No party objected to the granting of the request, and granting the request will not prejudice any party. The request for entry of a protective order will be granted, and a protective order will be entered. The ALJ notes, however, that entry of the protective order does not prejudge, and is not intended to prejudge, whether any material filed under seal and pursuant to the protective order is, in fact, confidential and/or privileged information. Determination of that issue will be made if and when there is a challenge pursuant to Rule 4 CCR 723-16-3.

15. Parties are reminded of Rule 4 CCR 723-1-22(d)(3), which states: “If a pleading refers to new court cases or other authorities not readily available to the Commission, six copies of each case or other authority shall be filed with the pleading.” If a party wishes the Commission to consider a cited authority *other than* an opinion of the United States Supreme Court, a reported Colorado state court opinion, or a Commission decision, the party must provide copies of that cited authority.

16. The parties are requested to provide the decision number when referring to either a Commission decision or a decision of the Federal Communications Commission.

II. ORDER**A. It Is Ordered That:**

1. The procedural schedule discussed above is adopted.
2. The parties shall follow the procedures and shall make the filings set forth above.
3. Hearing shall be conducted in this matter at the following dates, times, and place:

DATES: June 21 and 22, 2004

TIMES: 9:00 a.m. on June 21 and 11:00 a.m. on June 22

PLACE: Commission Hearing Room
1580 Logan Street, OL-2
Denver, Colorado

4. The request of Qwest Corporation for entry of a protective order is granted.
5. A protective order is issued pursuant to the provisions of Rule 4 *Code of Colorado Regulations* 723-16-3, subject to the caveat set forth in ¶ I.14, *supra*. Any party filing confidential material shall comply with the requirements of that rule, and any person (including counsel) seeking access to confidential material shall comply with the requirements of that rule.
6. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge