

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
ORDERING ADDITIONAL BRIEFING**

Mailed Date: July 21, 2004

I. STATEMENT

1. On April 6, 2004, Qwest Corporation (Qwest) filed a Petition for Arbitration of an Interconnection Agreement with DIECA Communications, Inc., doing business as Covad Communications Company (Covad). Staff of the Commission (Staff) intervened of right. Covad responded to the Petition.

2. 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. Hearing in this matter was held on June 21 and 22, 2004.

3. Pursuant to the procedural schedule established in this matter, Covad and Qwest filed post-hearing statements of position on July 9, 2004.¹ No response to these statements of position was permitted.

¹ Staff did not file a post-hearing statement of position.

4. On July 13, 2004, several days after the statements of position were filed, the Federal Communications Commission (FCC) issued a decision² in which it adopted an “all-or-nothing” rule with respect to the ability of Competitive Local Exchange Carriers (CLECs) to opt into existing interconnections agreements (ICAs).³ The “all-or-nothing” rule replaces the “pick-and-choose” rule⁴ in effect during the negotiations of a new ICA by Covad and Qwest and during the hearing in this matter.

5. The arguments made with respect to several of the issues in this proceeding (*e.g.*, Issues 1, 2, 3, 4, and TRO Issue 1 (with respect to high capacity enhanced extended loops)) involve, to a greater or lesser degree, the “ripple effect” of disputed ICA language because other CLECs could opt into Covad’s new ICA once it was approved by the Commission. At least to some extent, it appears that arguments based on opting into Covad’s new ICA may be rendered moot by the *FCC Order*.

6. Because of the timing of the *FCC Order vis-à-vis* the filing of statements of position, there is nothing in the record about the effect and impact, if any, of the *FCC Order* on the arguments advanced in this proceeding and which of those arguments, if any, are no longer relied upon by their advocate. To provide clarity to the Commission, and to give Qwest and Covad an opportunity to address the impact, if any, of the *FCC Order* on the arguments each made, the ALJ will order Qwest and Covad⁵ to file, on or before **July 28, 2004**, a supplemental

² Second Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC No. 04-164 (rel. July 13, 2004) (*FCC Order*).

³ Generally, the “all-or-nothing” rule requires a CLEC seeking to avail itself of terms in an existing ICA to adopt that ICA *in toto*, taking all terms, conditions, and rates from the adopted ICA. CLECs may no longer opt into only portions of an existing ICA.

⁴ Generally, the “pick-and-choose” rule permitted a CLEC to include in its ICA any individual service, network element, or interconnection contained in another carrier’s ICA approved by a state commission. See 47 *Code of Federal Regulations* § 51.809.

⁵ Staff may, but need not, file a statement of position addressing this issue if it wishes to do so.

statement of position addressing the impact of the *FCC Order* on the issues in this proceeding and on the arguments advanced in this proceeding.⁶ Absent further Order, no response to this supplemental briefing will be permitted.

7. The ALJ encourages the parties to examine the remaining issues in dispute in light of the *FCC Order* and, if possible, to reach agreement or to narrow the issues based on that order.

8. A copy of this Order was served on all counsel by electronic mail on July 21, 2004.

II. ORDER

A. It Is Ordered That:

1. On or before July 28, 2004, Qwest Corporation and DIECA Communications, Inc., doing business as Covad Communications Company, shall each file a supplemental statement of position addressing the impact, if any, on their positions in this proceeding of the following Federal Communications Commission decision: Second Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC No. 04-164 (rel. July 13, 2004).

2. On or before July 28, 2004, Staff may, but need not, file a statement of position addressing the impact, if any, on this proceeding of the following Federal Communications Commission decision: Second Report and Order, *In the Matter of Review of the Section 251*

⁶ The ALJ recognizes that this is a short time period within which to prepare the requested supplemental statement of position; however, the Commission's decision in this arbitration proceeding should issue on or before August 20, 2004. See letter from Winslow B. Waxter, Esq., dated July 12, 2004, and addressed to Mr. Bruce N. Smith, Director of the Commission (extending deadline to August 20, 2004). For the Commission to meet this date, the supplemental statements of position must be filed by the date specified above.

Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, FCC No. 04-164 (rel. July 13, 2004).

3. Absent further Order, no response to the supplemental statements of position will be permitted.

4. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge