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May 14, 2004

VIA HAND DELIVERY

CVD-T-05-01

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
472 West Washington Street
PO Box 83720
Boise, ID 83720-0074

Dear Ms. Jewell:

Qwest Corporation and Covad have signed two documents relating to Qwest's provision of the high frequency portion of the loop to Covad. Covad uses the high frequency portion of the loop to provide digital subscriber line (DSL) services to its end user customers. Both of these documents are available for public inspection; there are no confidentiality provisions for either. I am writing to you today to provide additional information as to whether the section 252 filing obligation under the Telecommunications Act applies to these two documents.

As a threshold matter, Qwest and Covad disagree whether the first of these two documents, the one entitled "Commercial Line-Sharing Amendment to the Interconnection Agreement" signed April 14, 2004 ("Line Sharing Amendment") is a final agreement that reflects the intent of the parties and a meeting of the minds. At the time of execution, the parties expressed their understanding that alterations would be made to the document, and the negotiations regarding such alterations are ongoing. Thus, it is Qwest's view that the Line Sharing Amendment document does not constitute a final, binding agreement. Covad takes the position that it is a binding agreement. Without waiving its position as to whether the Line Sharing Amendment is a final binding agreement, Qwest is filing it formally with the Commission under section 252 to eliminate any doubts about Qwest's compliance with the filing requirement. Upon the finalization and execution of a revised document, Qwest will file it with the Commission under section 252, and it will supersede the Line Sharing Amendment that Qwest is filing today.

The second document, entitled "Terms and Conditions for Commercial Line Sharing Arrangements," dated April 14, 2004 ("Commercial Line Sharing Arrangements"), is a binding agreement in the view of both parties. But, for the reasons stated below, the Commercial Line Sharing Arrangement is not within the section 252 filing requirement and thus Qwest has not

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filed it with the Commission formally under section 252. Qwest is attaching a copy of the Commercial Line Sharing Arrangements to this letter for the Commission's information.

The FCC's Triennial Review Order (TRO) and the resulting Rules eliminate the obligation under Section 251(c) to provide the high frequency portion of a copper loop beginning the effective date of the TRO, subject to the transitional line sharing conditions set forth in the TRO and the Rules. Rule 51.319(a)(1)(i). The transitional rules apply where the requesting telecommunications carrier begins providing DSL service to a particular end-user customer on or before one year after the effective date of the TRO. Rule 51.319(a)(1)(i)(B). For new DSL services provisioned after one year after the effective date of the TRO, the transitional rules do not apply, and under the TRO and Rules, the incumbent LEC has no obligation under section 251(c)(3) to unbundle the high frequency portion of the loop.

In sum, under the TRO and the Rules, Section 251(c)(3) may apply for new DSL services provisioned within one year after the effective date of the Order, which will be October 1, 2004. But for new DSL services provisioned after October 1, 2004, Qwest as the incumbent LEC does not have a section 251(c)(3) obligation to provide the high frequency portion of the loop.

As stated by the FCC, the Section 252 filing obligation applies to "an agreement that creates an *ongoing* obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation." *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, para. 8 (emphasis that of the FCC).

Combining the analysis of the TRO with the FCC's Declaratory Ruling regarding Section 252, the filing requirement may apply to an incumbent LEC's provisioning of the high frequency portion of the loop for new DSL orders placed by October 1, 2004. In contrast, for new DSL services placed after October 1, 2004, there are no Section 251(c) obligations upon the incumbent to provide the high frequency portion of the loop as an unbundled network element, and thus there are no section 252 filing obligations.

To be consistent with the structure of the TRO, the transitional rules, section 251(c)(3) and section 252, Qwest and Covad negotiated one agreement for new DSL services placed by October 1, 2004, and a second to govern new DSL services placed after October 1, 2004. An agreement addressing DSL services placed by October 1, 2004 is an amendment to the parties'



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interconnection agreement and thus Qwest is filing the Line Sharing Amendment with the Commission under section 252. We believe that the second document, the Commercial Line Sharing Arrangements, which governs DSL services placed after October 1, 2004, is not subject to section 251(c)(3) or section 252, and thus it has not been filed formally.

For the Commission's information, we have attached a copy of the Commercial Line Sharing Arrangements for DSL services placed after October 1, 2004. Qwest also will post a copy of that agreement on its wholesale website for public review, and Qwest is making that agreement available to any telecommunications carrier that assumes all of its terms and obligations.

Please contact me with any questions you may have about the mechanics of this submission. Should the Commission or its Staff have questions about the substance of these agreements or the legal positions expressed herein, Qwest asks that they be directed to Todd Lundy at (303) 896-1446. Thank you.

Very truly yours,

Mary S. Hobson

MSH:blg

Enclosures

cc: Weldon Stutzman (letter only)
Joe Cusick (letter only)

**CONFIDENTIAL
ATTACHMENTS**