



PUBLIC NOTICE

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DA 03-1438
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**DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF
QWEST COMMUNICATIONS CORPORATION, AND QWEST INTERPRISE AMERICA,
INC., BY COVAD COMMUNICATIONS COMPANY**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-106

On April 15, 2003, Qwest Communications Corporation (“QCC”) and Qwest Interprise America, Inc. (“QIA”) (collectively the “Transferors”) together with Covad Communications Company (“Covad”) and DIECA Communications, Inc. (“DIECA”) (collectively “Covad” or the “Transferees,” and together with Transferors, the “Applicants”) filed an application, pursuant to sections 63.03 and 63.04 of the Commission’s rules,¹ for consent to allow Covad to acquire QCC’s and QIA’s DSL customer base.²

This application does not fit into the presumptive streamlining categories of section 63.03(b) of the Commission’s rules because some of the customers being transferred are in-region customers of a dominant carrier that is a party to the transaction.³ Applicants request streamlined treatment, nonetheless, stating that this transaction is unlikely to raise the potential of any public interest harm. Applicants state that, apart from a small number of affected customers who are in-region (namely, some portion of QCC’s 330 resale customers), the vast majority of QCC and QIA’s customers (approximately 23,000) are located in geographic areas where neither QCC, QIA, nor any of their affiliates, serve as the incumbent LEC. Furthermore, Applicants state that because the proposed transaction involves the transfer of customers to

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants state that QCC and QIA currently provide a bundled DSL and internet access service to small and medium-sized business customers. Consistent with their position in other proceedings, Transferors dispute that such a bundled offering includes a telecommunications service subject to section 214 of the Communications Act. *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket Nos. 02-33, 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, 3032-34 (2002), paras. 24-27. However, Transferors state that they are seeking the Commission’s approval for this transaction under section 214 out of an abundance of caution.

³ For purposes of the streamlining rules, the term “carrier” includes any affiliates of such entities. *See* 47 C.F.R. § 63.03(b)(3). QCC and QIA’s affiliate, Qwest Corporation, is an incumbent local exchange carrier (LEC).

Covad, a nondominant competitor to Qwest, the fact that some portion of QCC's 330 resale customers are located in-region for Qwest works to reduce, not increase, Qwest or its affiliates' market share in-region.

The Bureau finds that this application is appropriate for streamlined treatment under the Commission's rules because: (1) it fails to fit into one of the presumptive streamlining categories, 63.03(b)(2)(ii), based only on the fact that an extremely small number of lines involved in this transaction are in-region for a dominant carrier; and (2) those lines are being transferred from affiliates of the dominant carrier in its service area to a nondominant carrier.⁴

QCC, a Delaware corporation, and QIA, a Colorado corporation, have principal offices in Denver, Colorado. QCC and QIA are affiliate companies that are 100 percent owned by Qwest Services Corporation, which is 100 percent owned by Qwest Communications International Inc. QCC provides interstate, interLATA services as a facilities-based carrier and on a resale basis; operator services; and competitive local exchange services out-of-region. QCC also provides bundled DSL and internet access service as a reseller in Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Washington and Wisconsin. QIA provides out-of-region frame relay and private line services. QIA also provides bundled DSL and internet access service to out-of-region customers in California, Delaware, District of Columbia, Illinois, Indiana, Kansas, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas and Virginia.

Covad, a California corporation, and DIECA, a Virginia corporation, have principal offices in Santa Clara, California. Covad and DIECA are wholly-owned subsidiaries of Covad Communications Group, Inc., a Delaware corporation. Covad provides facilities-based high-speed data telecommunications services to residential and business customers in Alabama, Arizona, California, Colorado, Connecticut, the District of Columbia, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, North Carolina, New Hampshire, New Jersey, New Mexico, Nevada, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

On March 19, 2003, the Applicants entered into an Asset Purchase Agreement by which Covad agreed to purchase QCC and QIA's DSL customer base.⁵ The customer base, the asset being transferred, consists of the customer contracts and customer account information. The customer base is largely made up of small and medium-sized businesses in the states of California, Delaware, the District of Columbia, Illinois, Indiana, Kansas, Maryland,

⁴ See 47 C.F.R. § 63.03(c); *Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations*, 17 FCC Rcd 5517, 5531-32 (2002) (providing that the Commission, acting through the [Wireline Competition] Bureau, will decide on a case-by-case basis whether streamlined treatment should be afforded to a particular application).

⁵ An additional 550 QIA customers located in California, Illinois, Massachusetts, Texas and Virginia, receive DSL internet access from DSLAMs located in their office buildings, instead of being serviced from central offices. These customers are not being transferred to Covad as part of this sale.

Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Texas and Virginia, who purchase a bundled DSL internet access service from QIA. A small number of approximately 330 business customers being transferred purchase their bundled DSL internet access from QCC on a resale basis. QCC resells to these customers the underlying services offered by Covad and WorldCom. These customers are located in Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Washington and Wisconsin. Some of these 330 customers are located in states (Arizona, Colorado, Minnesota, New Mexico, Oregon, Utah and Washington) where QCC's affiliate, Qwest Corporation, is the incumbent LEC. Upon completion of this transaction, Covad will commence transitioning the customer base to its own nationwide data network.

Applicants assert that granting this application will serve the public interest, convenience, and necessity by increasing competition and consumer choice in the long run in the provision of high-speed services. The transaction provides the Transferors increased liquidity. The transaction will also allow Covad to realize greater efficiencies and economies of scale in the provision of high-speed services to customers. As a result, Applicants state that Covad will be able to compete more effectively to provide high-speed data services. In addition, Applicants state that Covad has developed a special program called Covad Safety Net to help members of the customer base transition to Covad's network and minimize any service disruptions.

GENERAL INFORMATION

The transfer of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of assets application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days and reply comments within 21 days** of this notice.⁶ Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the domestic lines or authorization to operate on the 31st day after the date of this notice.⁷ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the

⁶ See 47 C.F.R. § 63.03(a).

⁷ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov, and
- (3) Christine Newcomb, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C360, Washington, D.C. 20554; e-mail: cnewcomb@fcc.gov, and
- (4) William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: wdever@fcc.gov; and
- (5) Kimberly Reindl, Office of General Counsel, 445 12th Street, S.W., Room 8-C812, Washington, D.C. 20554; e-mail: kreindl@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail

qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, or Christine Newcomb (202) 418-1573.

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