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May 25, 2001

VIA HAND DELIVERY

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RECORDS AND REPORTING

Re: Docket No.: 001797-TP

Dear Ms. Bayo:

On behalf of DIECA Communications, Inc. d/b/a Covad Communications Company, enclosed for filing and distribution are the original and 15 copies and a disk of the following:

- ▶ DIECA Communications, Inc., d/b/a Covad Communications Company's Prehearing Statement.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me in the envelope provided. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by DIECA Communications,
Inc., d/b/a Covad Communications Company
for Arbitration of Unresolved Issues in
Interconnection Agreement with BellSouth
Telecommunications, Inc.

Docket No. 001797-TP

Filed: May 25, 2001

DIECA Communications, Inc., d/b/a
Covad Communications Company's Prehearing Statement

DIECA Communications, Inc., d/b/a Covad Communications Company (Covad), pursuant to Order No. PSC-01-0884-PCO-TP and Order No. PSC-01-0884-PCO-TP, hereby files its Prehearing Statement.

A. APPEARANCES:

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Attorneys for Covad Communications Company

B. WITNESSES:

| <u>Witness</u> | <u>Subject Matter</u> | <u>Issues</u> |
|---|--|--|
| <u>Direct</u> | | |
| Jason D. Oxman (will adopt direct testimony of Mr. Koutsky) | Billing/Liability/Opt-In Issues | 1, 2, 3, 31, 32(a) |
| Thomas E. Allen | Provisioning Issues | 5(a), 5(b), 5(c), 6, 7(a), 7(b), 8, 11,12,13,21,22, 29, 30 |
| William Seeger | Interval Issues | 5(a), 5(b), 5(c), 8, 25, 30 |
| Elizabeth R. Y. Kientzle/ Joseph P. Riolo | Rates, terms and conditions for line sharing | 16, 18, 23, 24 |
| <u>Rebuttal</u> | | |
| Jason D. Oxman | Liability/Opt-In Issues | 1, 2, 3 |
| Thomas E. Allen | Provisioning Issues | 5(a), 5(b), 5(c), 6, 7(a), 7(b), 8, 11,12,13,21,22, 30 |
| William Seeger | Interval/Provisioning Issues | 5(a), 5(b), 5(c), 7(a), 23, 30 |
| Joseph P. Riolo | Collocation Rates | 29 |
| Elizabeth R. Y. Kientzle/ Joseph P. Riolo | Rates, terms and conditions for line sharing | 16, 18, 23, 24 |

C. EXHIBITS:

Direct

| <u>Exhibit</u> | <u>Subject</u> | <u>Witness</u> |
|-----------------------|---|-----------------------|
| ERYK/JPR-1 | Resume of Elizabeth R. Y. Kientzle | Kientzle |
| ERYK/JPR-2 | Resume of Joseph P. Riolo | Riolo |
| ERYK/JPR-3 | Proposed Prices for Line Sharing Over Home-Run Cooper | Kientzle/Riolo |
| ERYK/JPR-4 | Splitter and NRC Cost Development | Kientzle/Riolo |

Rebuttal

| | | |
|------------|--|----------------|
| JDO-1 | Excerpts from Interconnection Agreements | Oxman |
| TEA-1 | BellSouth Plans for DSL Service | Allen |
| TEA-2 | BellSouth discovery response | Allen |
| TEA-3 | Excerpt from Covad Interconnection Agreement with SWBT | Allen |
| ERYK/JPR-5 | Comparison of Proposed Prices for Line Sharing | Kientzle/Riolo |
| ERYK/JPR-6 | Excerpts from BellSouth Discovery Responses | Kientzle/Riolo |

D. STATEMENT OF BASIC POSITION:

Covad is the nation's largest competitive provider of xDSL services. The benefits of the provision of competitive broadband services to Florida consumers is enormous. However, in order to continue and accelerate the provision of such competitive xDSL services, the Commission must ensure that nondiscriminatory and commercially reasonable, terms and conditions are included in the interconnection agreement which will govern the parties' relationship. The terms, conditions and prices proposed by Covad in this proceeding will do just that and Covad urges the Commission to

direct BellSouth to incorporate the terms, conditions and prices Covad has set forth in the final interconnection agreement.

E. STATEMENT OF ISSUES AND POSITIONS:

A. [LEGAL ISSUE] What is the Commission's jurisdiction in this matter?

COVAD: The Commission has jurisdiction in this matter pursuant to Section 252 of the Federal Telecommunication Act of 1996 (Act) to arbitrate interconnection agreements. Section 252 states that a state commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. Further, Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with Act and its interpretation by the FCC and the courts.

1. **ISSUE:** What limitations of liability, if any, should be included in the Parties' Interconnection Agreement?

COVAD: Covad proposes that there be no limited liability for material breaches of the contract. Further, if BellSouth willfully breaches the contract or engages in gross negligence in implementing the contract, no limitation of liability should apply. In order to develop local competition via an interconnection agreement, the agreement must be enforceable.

2. **ISSUE:** What should BellSouth's obligations be under this Interconnection Agreement in the event that BellSouth's workforce, or the workforce of its suppliers and vendors, engage in a work stoppage?

COVAD: If BellSouth believes that a work stoppage is imminent, it should be required to engage in active consultations, meetings, and communications with Covad. As a very large customer of BellSouth, Covad must have the opportunity to engage in contingency planning as the result of a work stoppage.

3. **ISSUE:** Should there be a limitation on an ALEC's right to opt-in to an existing interconnection agreement that has only six months remaining before it expires?

COVAD: No. Such a restriction would violate FCC rule 51.809 which requires BellSouth to make available any interconnection agreement to which it is a party, which has been approved by a state commission upon the same rates, terms and conditions in the agreement. The rule imposes no minimum time

frame on the remaining duration of the agreement, nor does it require adoption of all "legitimately related" clauses. This standard is vague and subject to unnecessary dispute.

4. **ISSUE:** Is Covad entitled to receive a discount on services it purchases from BellSouth but does not resell to an end user, including services that it purchases for its own use?

The parties have reached an agreement on this issue.

5. **ISSUE:** (a) What is the appropriate interval for BellSouth to provision an unbundled voice-grade loop, ADSL, HDSL or UCL for Covad?

COVAD: These loops should be provisioned within 3 business days.

- (b) What is the appropriate interval for BellSouth to provision an IDSL-compatible loop for Covad?

COVAD: These loops should be provisioned within 5 business days.

- (c) What should be the appropriate interval for BellSouth to "de-condition" (i.e., remove load coils or bridged tap) loops requested by Covad?

COVAD: Deconditioning work should be done in 5 business days.

6. **ISSUE:** Where a due date for the provisioning of a facility is changed by BellSouth after a Firm Order Confirmation has been returned on an order, should BellSouth reimburse Covad for any costs incurred as a direct result of the rescheduling?

COVAD: Yes. BellSouth has a long history of repeatedly and unilaterally canceling Covad unbundled loop orders. These cancellations impose costs on Covad that should be reimbursed. This problem is exacerbated by the fact that BellSouth often sends more than 1 FOC per loop order, which also substantially increases Covad's costs. Covad simply wants nondiscriminatory treatment. Either BellSouth should not charge Covad when it modifies or cancels an order or it should reimburse Covad when BellSouth modifies or cancels an order.

7. **ISSUE:** (a) When BellSouth provisions a non designed xDSL loop, under what terms, conditions and costs, if any, should BellSouth be obligated to

participate in Joint Acceptance Testing to ensure the loop is properly provisioned?

COVAD: Joint Acceptance Testing is needed to identify non-functional loops during the provisioning process rather than in repair and maintenance. Joint Acceptance Testing should be done on every non-designed loop BellSouth provides to Covad. In actuality, such testing should not be necessary because BellSouth should always deliver a functioning loop. However, Covad will agree that BellSouth will provide joint acceptance testing on the UCL-ND for \$40. If BellSouth delivers UCL-ND loops on time that are functional 90% of the time, Covad will pay for the Joint Acceptance Testing. If BellSouth does not deliver UCL-ND loops that are functional on time 90% of the time, BellSouth pays for the Joint Acceptance Testing.

(b) Should BellSouth be prohibited from unilaterally changing the definition of and specifications for its loops?

COVAD: Yes. Covad needs certainty and the ability to consistently order loops as defined in its contract with BellSouth. Therefore, BellSouth's definition for DSL loops should remain as defined in the contract and Technical Specifications in place on the date of execution of the Interconnection Agreement.

8. **ISSUE:** When Covad reports a trouble on a loop where, after BellSouth dispatches a technician to fix the trouble, no trouble is found but later trouble is identified on that loop that should have been addressed during BellSouth's first dispatch, should Covad pay for BellSouth's cost of the dispatch and testing before the trouble is identified?

COVAD: No. BellSouth should not be permitted to charge Covad when no trouble is found on the loop. By not allowing a charge for "no trouble", BellSouth will have an incentive to fix the problem the first time, rather than opening and charging for multiple trouble tickets. Further, Covad will not be charged when BellSouth improperly and prematurely closes a trouble ticket.

9. **ISSUE:** What intervals should be adopted for the provision of information regarding dark fiber by BellSouth to Covad?

The parties have reached an agreement on this issue.

10. **ISSUE:** (a) Should Covad be required to pay for loop conditioning for loops less than 18,000 feet in length?

COVAD: This issue has been resolved in Docket No. 990649-TP, where the Commission noted that there should be no conditioning charges for loops less than 18,000 feet.

(b) What should the rates be for conditioning a loop?

COVAD: This issue will be resolved in Docket No. 990649-TP.

11. **ISSUE:** What rate, if any, should Covad pay BellSouth if there is no electronic ordering interface available, when it places a manual LSR for:

(a) an xDSL loop?

(b) line sharing?

COVAD: No manual order charge should be imposed when BellSouth has either failed to provide electronic ordering capabilities or when those electronic ordering systems fail or are otherwise unable to accept Covad orders. This will properly incent BellSouth to develop fully functional and robust electronic ordering systems for xDSL.

12. **ISSUE:** Should Covad have to pay for a submitted LSR when it cancels an order because BellSouth has not delivered the loop in less than five business days?

COVAD: No. Because of BellSouth's poor performance in delivering loops, Covad customers often cancel orders while Covad is waiting for BellSouth to deliver the loop. There should be no charge if Covad cancels an order due to BellSouth's failure to perform.

13. **ISSUE:** What access should Covad have to BellSouth's loop make up information?

COVAD: The parties have reached agreement on this issue.

14. **ISSUE:** When ordering an SL1 loop, should Covad be able to order and reserve a specific facility?

COVAD: The parties have reached an agreement on this issue. Further, in Docket No. 990649-TP, the Commission decided that ALECs could order and reserve such facilities.

15. **ISSUE:** What should be the interval for installation in central offices of splitters necessary to implement line sharing?
- The parties have reached agreement on this issue.
16. **ISSUE:** Where should the splitters be located in the central office?
- COVAD:** Splitters should be placed either on the MDF or within a minimal distance (e.g., 25 feet) of the distribution frame. This will result in efficient provisioning and mitigate placement costs.
17. **ISSUE:** Should Covad be permitted to purchase splitter space in increments of one port at a time?
- COVAD:** The parties have reached an agreement on this issue.
18. **ISSUE:** What should the provisioning interval be for the line sharing unbundled network element?
- COVAD:** It should take no more than 24 hours to provision a loop that does not require deconditioning because the only physical work required is wiring the splitter configuration into the existing service. To provide BellSouth with time to achieve this interval, Covad proposes a "step-down" process to drive the interval to 24 hours within 2 months of the Order in this docket. BellSouth should provision loops first within 3 days (from Day 1 to Day 30 after the Order is issued), then within 2 days (from Day 31 to Day 60) and, then within 24 hours beginning on Day 61.
19. **ISSUE:** Deleted. Issue 19 has become Issue 11(b).
20. **ISSUE:** Should BellSouth be required to certify the functionality of the splitters that it has in place as well as the splitters that it places in service in the future?
- COVAD:** The parties have reached an agreement on this issue.
21. **ISSUE:** Should BellSouth provide accurate service order completion notifications for line sharing orders?
- COVAD:** Yes. Provisioning a line shared loop requires only a simple cross connect in the central office. Covad must have accurate information that the cross connect has been performed in order to provision the loop. BellSouth refuses to do so, but instead refers Covad to inaccurate reports on BellSouth's website. BellSouth should be required to update its web report daily (not

three times per week as it currently does) and should provide Covad with a daily list of completed line share orders.

22. **ISSUE:** Should BellSouth test for data continuity as well as voice continuity both when provisioning and repairing line shared loops?

COVAD: Yes. BellSouth should use the Sunset ADSL test for line sharing orders, which it uses on its retail orders, and LSVT for provisioning of line shared circuits. This will help determine that BellSouth has properly completed the cross connection on the data line from the splitter to the collocation space.

23. **ISSUE:** Should Covad have access to all points on the line shared loop?

COVAD: Yes. Such access is essential for testing purposes associated with maintenance and repair.

24. **ISSUE:** Are the rates proposed by BellSouth for unbundled loops and line sharing compliant with TELRIC pricing?

COVAD: No. The Commission should adopt the prices in Covad Exhibit ERYK/JPR-3 for the components of line-sharing over home-run cooper, with any necessary adjustments to reflect the Commission's decision in Docket No. 990649-TP. The Commission should establish a process to determine the appropriate pricing, terms and conditions for fiber-fed DSL capable loops.

25. **ISSUE:** In the event Covad desires to terminate its occupation of a collocation space, and if there is a waiting list for space in that central office, should BellSouth notify the next ALEC on the waiting list to give that ALEC the opportunity to take that space as configured by Covad (such as racks, conduits, etc.), thereby relieving Covad of its obligation to completely vacate the space?

COVAD: Yes. If Covad leaves collocation space, the next ALEC has an opportunity to take over that space in a short time and at low costs. BellSouth wants Covad to remove all its equipment, which is very wasteful. Covad just wants to retain the right to find another ALEC interested in acquiring the space.

26. **ISSUE:** In the event that Covad contracts for collocation space in an office where there is a waiting list for space, but cancels its request for collocation before it has occupied the space, should Covad be liable to pay for the space preparation work that BellSouth has performed when either BellSouth or the next ALEC benefits from that work?

The parties have reached an agreement on this issue.

27. **ISSUE:** When should charges for collocated space begin?
- The parties have reached an agreement on this issue.
28. **ISSUE:** Should BellSouth be required to provide power cabling from the BDFB to Covad's collocation space?
- COVAD:** The parties have reached an agreement on this issue.
29. **ISSUE:** What rates should Covad pay for collocation?
- COVAD:** The rates BellSouth has proposed for collocation are too high. It has used erroneous task times and/or unsupportable assumptions. The Commission should reduce the elements specifically discussed in Mr. Riolo's rebuttal testimony and apply a reasonable percentage decrease to the remaining proposed rates, subject to true-up, after completion of the generic collocation docket.
30. **ISSUE:** Should BellSouth resolve all loop "facilities" issues within thirty days of receiving a complete and correct local service request from Covad?
- COVAD:** Yes. The loop installation process must be predictable and uniform. A time frame must be contractually provided for resolution of facility issues, so that Covad's orders do not fall into a black hole of "pending facilities."
31. **ISSUE:** Should BellSouth send Covad both a paper and a duplicate electronic bill and in either instance, when should the bill be due?
- COVAD:** BellSouth should send bills in both paper and electronic form and Covad should have 30 days to process the bills when received. Covad has proposed that BellSouth send the bills in both formats within 10 business days from the bill date. But if both bills are not sent within that time, the payment should be due within 30 days of receipt of the later bill, giving Covad 30 days to process a bill. BellSouth wants to tie the payment to the "bill date" not the receipt date and this could result in Covad having less than thirty days to pay and process a bill. Covad needs sufficient time to review the bills prior to payment.
32. **ISSUE:** (a) Should Covad be required to pay amounts in dispute as well as late charges on such amounts?
- COVAD:** No. Covad should not have to pay the amount of the overcharge while the dispute is resolved. Late payments should not be assessed on amounts

withheld because of a dispute. Late fees should be assessed only if Covad has incorrectly withheld an amount.

(b) How long should parties endeavor to resolve billing discrepancies?

The parties have reached an agreement on 32(b).

33. **ISSUE:** Should BellSouth's Network Management Center directly inform Covad's Network Management Center about all Abnormal Condition Reports that directly or indirectly affect the services of unbundled network elements purchased from BellSouth?

The parties have reached an agreement on this issue.

34. **ISSUE:** Should BellSouth notify Covad's Network Management Center when BellSouth's Emergency Control Center is activated or placed on alert?

The parties have reached an agreement on this issue.

35. **ISSUE:** If an Abnormal Condition Report or disaster affects services or facilities provided to Covad, should BellSouth provide Covad documentation of that condition and perform a root cause analysis of that situation?

The parties have reached an agreement on this issue.

F. STIPULATED ISSUES:

The parties have reached agreement on Issues 4, 9, 10, 13, 14, 15, 17, 20, 26, 27, 28, 32(b), 33, 34, 35.

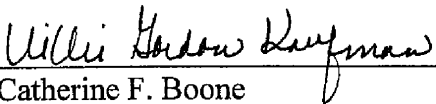
G. PENDING MOTIONS:

None.

H. OTHER MATTERS:

1. On May 23, 2001, Covad filed a Notice of Intent to Request Specified Confidential Classification for certain information it used in the rebuttal testimony of Kientzle/Riolo (panel) and Riolo which BellSouth claims is confidential proprietary information and as to which the parties have signed a Protective Agreement. BellSouth has indicated its intent to file a Request for Confidential Classification in the appropriate time period.

2. Mr. Oxman will adopt the direct testimony of Mr. Koutsky.



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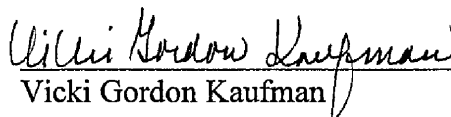
Attorneys for Covad Communications
Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing DIECA Communications, Inc., d/b/a Covad Communications Company's Prehearing Statement has been furnished by (*) hand delivery this 25th day of May, 2001, to the following:

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