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July 19, 2001

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

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 of the following:

- Covad Communications Post-Hearing Brief (Public Version).

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

VGK/bae
Enclosure

APP	_____
CAF	_____
OMP	_____
COM	<u>5</u> _____
CTR	_____
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McWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Interconnection Arbitration
By DIECA Communications, Inc. d/b/a
Covad Communications Company Against
BellSouth Telecommunications, Inc.

Docket No. 001797-TP

COVAD COMMUNICATIONS POST-HEARING BRIEF
PUBLIC VERSION

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

Covad's Position ** Covad proposes that the parties retain the existing limitation of liability provision that does not limit liability in the event of a material breach of the contract or in the event of gross negligence or willful misconduct. Without meaningful threat of enforcement, contract rights are meaningless.**

Covad seeks to maintain the status quo, by retaining the limitation of liability provision currently found in the Interconnection Agreement between BellSouth and Covad.¹ BellSouth seeks to alter the current limitation of liability language to insulate itself from liability in the event of a material breach of contract.² Notably, BellSouth's first proposal attempted to limit liability even in the event of gross negligence or willful misconduct.³ In reply testimony, BellSouth reversed itself and admitted that it should be liable for at least that type of horrific conduct. In further negotiations, BellSouth proposed that Covad accept the MCI language that throws concepts of "reasonable interpretation," "good faith" and "refusal to comply with the contract"⁴ into the mix, further confusing the clause and adding uncertainty to each party's liabilities. The key issue here is that BellSouth wishes to limit its liability in the event of material breaches of the contract. Covad disagrees that such liability should be limited. BellSouth makes

¹ Tr. 590-92.

² Tr. 598.

³ Tr. 54.

⁴ Tr. 115-16.

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FPSC-COMMISSION CLERK

two arguments to support its attempts to change the existing contract language. First, BellSouth argues that the existing language is subject to potential dispute because of lack of clarity. Second, BellSouth contends that the Commission cannot impose a liability cap because it is not specifically required by Section 251. Both of those arguments must be rejected in the face of the clear evidence and law to the contrary.

The evidence showed that the existing liability cap provision (that Covad seeks to retain) functioned effectively for the parties for the duration of the Covad Interconnection Agreement. Furthermore, even with multiple other ALECs opting into Covad's agreement, BellSouth experienced absolutely no disputes related to the limitation of liability provision currently in place.⁵ Nonetheless, BellSouth seeks to replace that language with new language enabling BellSouth to escape liability if it refused to comply with the contract in good faith, a concept even BellSouth admits is subject to dispute.⁶ Covad seeks to retain the opportunity to argue before the appropriate tribunal that we are entitled to damages beyond the actual cost of service.⁷ As Commissioner Palecki aptly noted, limiting BellSouth's liability for ordinary negligence or breaches of contract cannot cover Covad's loss of customers or other harm it suffers as a result of breaches of contract.⁸ Retaining the existing contract language allows Covad to do that, without making any determination on the merits of a potential future dispute.

BellSouth also argues that liability caps are not a requirement of Section 251 and, thus, are not appropriately decided in interconnection arbitrations. For this position, BellSouth relies on the Commission's order in the MCI arbitration, in which the Commission found that it did not have sufficient evidence before it in the record to make a determination on the appropriate

⁵ Tr. 593, Ex. 17. ("BellSouth has not been involved in any disputes with ALECs regarding the limitation of liability provision in the agreement in which the materiality of the dispute was raised as an issue.")

⁶ Tr. 596.

⁷ Tr. 77.

limitation of liability provision.⁹ BellSouth also references a Georgia Commission decision, which actually supports Covad's position that the Commission should not impose on ALECs a greater limitation of liability provision than it an ALEC is willing to adopt in negotiations.¹⁰ The Commission should require the parties to retain the existing liability cap language, upon which both agreed in previous negotiations.

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

Covad's Position **These loops should be provisioned within 3 business days. This interval should be included in Covad's Interconnection Agreement.**

Issue 5(b): What is the appropriate interval for BellSouth to provision an IDSL-compatible loop for Covad?

Covad's Position ** UDC/IDSL-compatible loops should be provisioned within 5 business days. If provisioning this loop requires a copper work around, the interval should be 10 business days. These intervals should be included in Covad's Interconnection Agreement. **

Issue 5(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's Position ** xDSL loops that require conditioning should be provisioned within 5 business days. This interval should be included in Covad's Interconnection Agreement.**

There are actually two subparts that underlie the issues set forth in Issues 5(a), 5(b) and 5(c): (1) What is the appropriate loop delivery interval for various types of loops?; and (2) Should that interval be included in Covad's Interconnection Agreement with BellSouth? Covad's position is simple. Stand alone xDSL loops like ADSL, HDSL, and UCL loops should be provisioned in 3 business days from the receipt of a correct and complete Local Service Request. UDC/IDSL compatible loops should be delivered in 5 business days as should xDSL

⁸ Tr. 87.

⁹ Tr. 83.

¹⁰ Tr. 84-85.

loops that require conditioning. These intervals comprise a material term of our business relationship with BellSouth. As such, they must be included in our Interconnection Agreement, where they are not subject to one party's ability to unilaterally extend those intervals.

BellSouth's position remains murky. BellSouth argues it is committed to "target" intervals in its Product and Service Guide: 7 business days for ADSL, HDSL, UCL loops, 12 business days for UDC/IDSL loops and 14 business days to provision conditioned loops. BellSouth's "targets" stop short of a commitment to meet those intervals.¹¹ Moreover, BellSouth steadfastly refuses to incorporate any intervals into its Interconnection Agreement,¹² preferring to retain the right to extend them, as it did in July 2000 when it changed the ISDN loop interval from 7 to 12 business days.¹³ Moreover, BellSouth believes it should be able to unilaterally increase or decrease loop delivery intervals without consulting ALECs about their priorities, as it did when it chose to decrease the SL1 interval but not the UCL-ND interval, even though both are provisioned in the same way.¹⁴ To achieve a concrete interval in its Interconnection Agreement, Covad is willing to accept the risk that BellSouth process improvements may further decrease the interval.¹⁵

The only evidence in the record upon which this Commission can set intervals is information supplied by Covad. Specifically, Covad showed that other incumbent LECs like Verizon and SBC provision loops with and without conditioning in substantially less time than does BellSouth.¹⁶ Furthermore, Covad has demonstrated that loop delivery intervals are routinely a part of Interconnection Agreements Covad has with other incumbent carriers. Additionally, Covad's witness Seeger testified that he had personally provisioned the types of

¹¹ Tr. 970-73.

¹² Tr. 975.

¹³ Tr. 980.

¹⁴ Tr. 979.

loops used for xDSL service when he worked with Verizon and its predecessors. Seeger testified that the work necessary to provision a loop could easily be accomplished in the intervals proposed by Covad.

BellSouth does not know if it can provision a loop in 3 days -- it has never tried. BellSouth argues that workload, force management and related factors require a longer interval than proposed by Covad.¹⁷ The evidence shows that when BellSouth is ordered by a Commission to comply with a loop delivery interval -- miraculously, BellSouth is able to adjust its workload and force management issues to accommodate that order. Without being ordered to provision loops in a more timely fashion, BellSouth will not do so. In fact, in negotiations with Covad, BellSouth offered "target" intervals for loop conditioning from 14 to 30 business days. Then, after the Georgia Commission ordered that performance penalties be paid if BellSouth did not deliver conditioned loops within 14 business days, BellSouth suddenly decided that it could deliver conditioned loops in that amount of time.¹⁸ BellSouth has obviously already adjusted its process and workforce to meet that interval, after the Georgia Commission indicated in October 2000 that the conditioning interval must be reduced. It is time for another adjustment of that interval, otherwise BellSouth will not continue to improve its processes. Verizon automatically conditions loops within the 6 day delivery interval and SBC can do this work within 10 business days. Florida consumers deserve service every bit as efficient as consumers get in Texas or New York.

Issue 6: 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?

¹⁵ Tr. 205.

¹⁶ Tr. 125-127, 970-73; Ex. 38.

¹⁷ Tr. 981.

¹⁸ Tr. 1006.

Covad's Position ** BellSouth proposes that Covad be charged whenever it changes or modifies an order. BellSouth should compensate Covad in the same amount when BellSouth changes or modifies an order, by, for example, issuing a new delivery date. Covad simply wants nondiscriminatory treatment. ******

BellSouth has attempted to distract the Commission by painting this issue as something that it is not. Covad is not asking for a guarantee that its loops will be delivered on the delivery due date. Covad is not asking BellSouth to check the existence of facilities prior to issuing a Firm Order Confirmation with a delivery due date.¹⁹ Covad seeks recognition that when BellSouth does not deliver loops on time or when BellSouth unilaterally changes an order, it costs Covad money. In negotiations, BellSouth sought to impose on Covad charges resulting from a Covad initiated change to an order.²⁰ In response, Covad seeks similar treatment.

Once Covad receives a firm order confirmation (“FOC”), it contains the due date for the installation of that loop and Covad must update its internal systems to reflect the date that Bellsouth is scheduled to complete delivery of the loop. Based on the due date provided by BellSouth on the FOC, the Covad systems then trigger testing on the loop, notification to the end user, and dispatch of a Covad installation technician for completion of the DSL service.²¹ Changes or cancellation of those orders once the FOC is received costs Covad money.

The evidence shows that BellSouth routinely cancels or changes loop orders, causing Covad to incur costs. For loop orders that require conditioning or those with certain facilities issues, BellSouth simply cancels the order and requires Covad to take some affirmative action to reinstate that order.²² Likewise, when BellSouth misses an installation appointment, BellSouth sends a notice to Covad, but if Covad does not resubmit the LSR within 5 days requesting a new

¹⁹ Tr. 293.

²⁰ Tr. 131.

²¹ Tr. 133.

²² Tr. 285.

delivery date, BellSouth cancels the order.²³ Moreover, BellSouth routinely changes the delivery date for loops.

All of these BellSouth actions cause Covad to incur additional and unnecessary expenses. Each time a new LSR must be submitted, a Covad agent must fill out the LSR form, fax it to BellSouth, request a new delivery date, monitor the BellSouth website for that order, and then input that information into the Covad systems for a second time.²⁴ Likewise, when BellSouth changes a delivery date, it notifies Covad by facsimile. Assuming Covad receives the fax appropriately, Covad must change its internal system dates, re-notify the customer, and otherwise restart the Covad processes.²⁵ If we do not get the loop delivery date changed in sufficient time, Covad wastes money dispatching a truck on a loop that BellSouth has not yet delivered and Covad's customers may have already taken off from work to await BellSouth's arrival.²⁶ All of this costs Covad money and goodwill.

The purpose of Issue 6 is to seek reimbursement of some amount of that money, when BellSouth changes or cancels an order. Notably, Covad does not contest that when Covad changes or modifies an order BellSouth incurs a cost. BellSouth must recognize that the reverse is also true. Covad's propose language is fair and applies equal charges to BellSouth and Covad for changes to orders.

Issue 7(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's Position ** BellSouth should provide Joint Acceptance Testing on every 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

²³ Id.

²⁴ Tr. 133.

²⁵ Id.

²⁶ Tr. 134.

UCL-ND loops that are functional on time 90% of the time, BellSouth pays for the Joint Acceptance Testing.**

Without meaning to, BellSouth's witness Latham captured the essence of why Covad arbitrates Issue 7(a). "If Covad wants the assurance that the loop is fully functional at the time of delivery . . ." Covad must pay extra.²⁷ "If they [Covad] want the assurance on the front end when they issue the order that it's going to be fully connected all the way through on the date that the loop is provisioned, then what I'm suggesting here is that they would pay those costs."²⁸ In other words, when Covad orders an Unbundled Cooper Loop-Non Designed ("UCL-ND"), Covad must first pay for the loop. If Covad wants the loop to be working when delivered, Covad must pay again. Let us be clear: Covad has no interest in and frankly no use for a loop that is not fully provisioned and working.²⁹ To suggest that, when Covad orders a loop, we should have to pay extra to make sure it works is ridiculous.

BellSouth admits that it is obligated to deliver functioning loops.³⁰ To deny that obligation would be ludicrous. A loop, after all, is a transmission facility capable of transmitting an electrical or optical signal. If the cross connections are not made or if the facility is not connected all the way from the main distribution frame to the customer's premise, it cannot be called a loop.³¹ And BellSouth admits that it will have to dispatch a truck to get the loop working, if it is not working at the time of delivery. So the question posed in Issue 7(a) is whether steps should be taken during provisioning to insure that the loop works or whether those steps should be taken in the repair and maintenance mode.

²⁷ Tr. 967.

²⁸ Tr. 989.

²⁹ Tr. 683.

³⁰ Tr. 984.

³¹ Tr. 689-90 (Q: So, what we are saying is that there are a number of reasons for which Covad's customer could be sitting at home. Covad could roll a truck to install the service and for whatever reason BellSouth has not properly provisioned the loop, right? A: There could be a number of causes, but the probability is low.)

Covad's preference is clear. Covad will pay for the Joint Acceptance Testing on this loop if it turns out that BellSouth is delivering loops on time and working 90% of the time.³² From Covad's perspective, the initial steps involved in installing loops constitutes a critical part of Covad's relationship with a new customer. Covad seeks to avoid having a customer wait at home all day for Covad to install DSL, only to find that BellSouth has not fully provisioned the loop.³³ The dissatisfaction resulting from such an experience early in the customer's relationship with Covad can and does have long term, detrimental effects on Covad. Furthermore, Covad wastes money dispatching trucks to complete installations when BellSouth has not provisioned the loop, an expense for which BellSouth refuses to compensate Covad.³⁴ Repeated failures to get the loop up and working at initial installation virtually assures that Covad will lose the customer. Covad's experience reveals that even when BellSouth supposedly performs all kinds of internal testing, BellSouth continues to deliver loops that are not working or working, but late.³⁵

Joint Acceptance Testing should be unnecessary, because BellSouth should put processes in place to insure that it delivers functional loops every time.³⁶ Because it does not, Covad instituted the Joint Acceptance Testing process to insure that both Covad and BellSouth know at the conclusion of the provisioning process that the loop is functional. BellSouth has incorporated this process into its methods and procedures for ADSL, HDSL, UCL and UDC/IDSL loop and we ask that it be incorporated into the UCL-ND process. Since new loop products are even more

³² Tr. 165-66.

³³ Tr. 167-68.

³⁴ Tr. 686.

³⁵ Tr. 136,165.

³⁶ Tr. 684 ("In most cases the records are going to be correct. In most cases, the loop will have all specifications that it's designed to have in the records."); Tr. 687 ("Well, they [UCL-ND] should work the vast majority of the times. If they don't work, then we [BellSouth] do have a problem and we need to fix that."). If that is the case, why is BellSouth afraid of Covad's proposal? Why is BellSouth unwilling to put its money where its mouth is?

likely to have provisioning problems, Covad believes it is imperative that functionality be confirmed during the provisioning process of the UCL-ND.

Do not be deceived by BellSouth's claims that Covad's offer will not compensate it sufficiently for testing. First, Covad has a contract with Southwestern Bell that allows Southwestern Bell to charge even less than Covad is proposing.³⁷ Second, BellSouth's witness Kephart made it clear that BellSouth simply has no faith in its ability to provision UCL-ND loops on time and working. BellSouth refuses to base payment for Joint Acceptance Testing on the percentage of loops successfully provisioned, no matter what level of compensation Covad offered for the testing.³⁸ BellSouth will perform testing to insure that its loops are functional, but only if it is compensated without limitation. Under BellSouth's view, if Covad orders 100 UCL-ND loops with Joint Acceptance Testing during provisioning, even if BellSouth failed to deliver a single working loop, Covad would have to pay for all the loops and all the testing. If BellSouth's statements are true that the risk of nonworking loops is minimal, BellSouth should be able to deliver working loops on time 90% of the time. The Commission should adopt Covad's reasonable proposal.

Issue 7(b): Should BellSouth be prohibited from unilaterally changing the definition of and specifications for its loops?

Covad's Position ** 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.**

The technical specifications for an xDSL loop comprise material aspects of the contract between Covad and BellSouth. Covad seeks to protect those material aspects of its contract from unilateral changes imposed by BellSouth. Although BellSouth ridiculed this request as a

³⁷ Tr. 698; Ex. 22.

³⁸ Tr. 696.

“ridiculous solution” to an “irrational fear,”³⁹ Covad prefers to have a contract in which both parties obligations are known and are not subject to unilateral change.⁴⁰ BellSouth believes it should retain the right to change loop specifications at will, and BellSouth contends that it “would do it [make changes] in a positive way,” and that it will not impact Covad’s services. The evidence shows that BellSouth does not know what services we are providing or what services we are developing based on existing technical specifications, thus it is impossible for BellSouth to guarantee that changing those specifications will not effect Covad’s service.⁴¹ This is not an irrational fear. Rather, it is a legitimate concern of a viable business that seeks to successfully stay in business for the long run. Besides, if BellSouth is convinced it’s changes will always be positive, why not present an amendment to Covad, explain the benefits of making the changes, and obtain Covad’s approval. That, BellSouth will not do.

Q. So, you’d like to reserve the right to unilaterally alter the definitions of the loops that Covad buys?

A. We’d like to reserve the right to alter the TR to reflect changes in technology and perhaps regulatory requirements, yes.

Q. And why, if there were such changes in technology or regulatory requirements, why couldn’t BellSouth come to Covad and propose an amendment?

A. Well, you say propose an amendment. That implies an agreement on the part of Covad. . . .⁴²

BellSouth attempted to convince this Commission that ensuring the material terms of Covad’s contract remained the same throughout the life of the contract would some how limit

³⁹ Hardly the language of a benevolent wholesale business partner, eager to insure Covad’s success in the marketplace. It is exactly this type of condescension and patronizing commentary that justifies Covad’s desire to set its rights and BellSouth’s obligations firmly in contract.

⁴⁰ Tr. 702.

⁴¹ Tr. 298.

⁴² Tr. 702.

BellSouth's ability to make "network upgrades."⁴³ As Exhibit 11 demonstrates, the technical specification in TR 73600 defines the physical characteristics of the loop as well as loop performance parameters (how much excess noise is acceptable, etc.).⁴⁴ This has nothing to do with outside plant network upgrades; Instead, it defines the physical and performance characteristics to which Covad is entitled each time it orders a loop whose specifications are included in TR 73600. All Covad asks is that the specifications that govern loop definitions at the beginning of our contract continue to govern throughout our contract.⁴⁵

Issue 8: 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's Position ** BellSouth should not be permitted to charge Covad when no trouble is found on the loop. This will provide BellSouth with an incentive to fix the problem the first time, rather than opening and charging for multiple trouble tickets. Covad should not be charged when BellSouth improperly and prematurely closes a trouble ticket. ******

The evidence demonstrated that BellSouth had responded to numerous trouble tickets by responding, "no trouble found," only to later identify a BellSouth loop problem.⁴⁶ This constitutes a serious problem for Covad. In Florida, Covad has been forced to open more than one trouble ticket on 40% of the loops where a trouble ticket was opened at all.⁴⁷ That means that 40% of the time, BellSouth is failing to resolve the problem with its loop on the first trouble.⁴⁸ Covad seeks to incent BellSouth to identify and resolve troubles the loop on the first trouble ticket. BellSouth's testimony contrasts with BellSouth's proposed contract language, Exhibit 39. In testimony, BellSouth admitted that trouble tickets closed as "no trouble found"

⁴³ Tr. 251.

⁴⁴ Tr. 296.

⁴⁵ Tr. 251-52.

⁴⁶ Tr. 138.

⁴⁷ Tr. 139.

⁴⁸ Id.

(on which a Bell problem is later identified) should not be charged to Covad.⁴⁹ BellSouth's proposed contract language includes no such admission. Moreover, BellSouth admits it has no mechanism "to not charge Covad for those trouble tickets or to somehow credit it automatically."⁵⁰ Covad's proposal is that Covad be treated like other customers are treated, no charges for trouble tickets whatsoever.⁵¹ Forcing Covad to dig through the bills, determine which are the inappropriate BellSouth charges, and raise a billing dispute punishes Covad twice: once when BellSouth erroneously closes the trouble ticket and a second time when BellSouth forces Covad to bear the burden to identify and rectifying the BellSouth inappropriate charge. Since BellSouth proposes no reasonable solution to this problem, the Commission should adopt Covad's language.

Issue 11: 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's Position ** No manual order charge should be permitted, unless and until, BellSouth has in place functional, stable electronic ordering systems for all loop types which Covad orders. If mechanized ordering systems are not functioning for some reason and Covad is forced to submit a manual order, Covad should pay the electronic ordering rate.

As it has evolved, this issue includes two subparts: (1) What should be the charge when Covad places a manual order because existing BellSouth mechanized ordering systems are not functioning? and (2) What should be the charge when Covad is forced to place manual orders because BellSouth has not yet implemented electronic ordering for certain loop types? On this issue as well, BellSouth's final contract language proposal does not match the promises made in testimony. In written testimony and at the hearing, BellSouth admitted that "BellSouth agrees

⁴⁹ Tr. 556; 610.

⁵⁰ Tr. 610.

that if, due to system failures, Covad must place a manual order for something that could normally be ordered electronically, Covad will only pay the electronic ordering rates.”⁵² Nonetheless, BellSouth’s language proposed in Exhibit 39 makes no allowance for different charges based on the availability and functionality of existing BellSouth systems.

Furthermore, BellSouth fails to address the second aspect of this issue. The evidence shows that UDC/IDSL loops cannot be ordered electronically because BellSouth has not upgraded its electronic ordering systems to provide for this functionality.⁵³ Meanwhile, BellSouth has full electronic functionality to place retail orders for similar ISDN loops. BellSouth likewise could not comment on why it developed a new nondesigned UCL loop (the UCL-ND), but failed to enable its ordering systems to accept these loop orders mechanically.⁵⁴ Covad’s inability to order those loops electronically results from BellSouth’s failure to deploy electronic ordering systems for those loops. As a result, BellSouth should bear the burden of that failure and be allowed to charge Covad only the forward looking, electronic ordering rate.

Issue 12: 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 Position ** 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 cancellation charge if a Covad customer cancels an order because it is taking BellSouth too long to provision the loop. **

BellSouth seeks to charge Covad a cancellation fee, even when the Covad customer cancels an order as a result of delays in the BellSouth provisioning.⁵⁵ This penalizes Covad twice: once when we lose the customer and a second time when we have to pay a cancellation

⁵¹ Tr. 615.

⁵² Tr. 559.

⁵³ Tr. 620.

⁵⁴ Tr. 622.

⁵⁵ Tr. 141.

rate. The evidence showed that BellSouth does not impose cancellation charges on its retail ISP customers when they cancel an order before provisioning.⁵⁶

Furthermore, BellSouth makes an array of commitment guarantees available to retail customers. For example, BellSouth provides a credit to private line service customers should the company fail to meet its commitment in connection with an installation or repair service.⁵⁷ That credit is in the amount of \$100. Likewise, BellSouth offers a service installation guarantee on some service, such that BellSouth will credit the entire nonrecurring charge of the service if it is not installed and working on time.⁵⁸

Covad seeks nothing as generous as those offerings and Covad believes that its proposal will have only a minimal effect on BellSouth. First, it would apply only when a customer cancels an order. Thus, if BellSouth delays delivering a loop, but the customer is willing to wait, there will be no cancellation and thus no cancellation charge. However, in situations where the customer elects to cancel because BellSouth has exceeded the loop delivery interval, BellSouth should not impose the cancellation charge on Covad.

Issue 16: Where should the splitters be located in the central office?

Covad's Position ** 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. ******

Prior to the commencement of the hearing, BellSouth agreed to provide Covad with three options for splitter ownership. Initially, BellSouth insisted that it own and maintain the splitter, but recently BellSouth has allowed Covad to own and maintain its own splitters and that BellSouth will maintain in a virtual collocation type arrangement a Covad owned splitter, at

⁵⁶ Tr. 608.

⁵⁷ Tr. 623; Ex. 19.

⁵⁸ Id.

Covad's request.⁵⁹ When BellSouth owns and maintains the splitter, the Commission should require that BellSouth place the splitters on the Main Distribution Frame ("MDF"). Such an approach not only reflects an efficient and cost-minimizing configuration that harmonizes with the FCC's pricing policies, but also is justified by evidence in the record.

Placing the splitter on the MDF or within 25 feet of it is the most feasible and most efficient configuration for four primary reasons. First, such placement decreases the length of tie cable necessary to connect the splitter to MDF and collocation space. Second, placing the splitter on the MDF requires few cross connections and tie cables, thus decreasing the cost and increasing the efficiency with which a line shared loop can be provisioned.⁶⁰ Third, inefficient configurations, like those proposed by BellSouth, also heighten the risk of service failures attendant with use of excessive tie cables and cross-connects.⁶¹ Finally, the inefficient BellSouth-proposed configurations increase the length of cable that carries the DSL signal from a customer's premises to a Covad's DSLAM. In certain multi-storied central offices, the splitter configuration could add as much as 500 to 1,000 feet to the overall length of the cable. As a result, because DSL is a distance-sensitive technology, ALECs may be limited in their ability to offer xDSL service to some customers served by that central office, and customers may experience reduced service performance.⁶² Consequently, BellSouth must not be permitted to impose these inefficient configurations on ALECs.

BellSouth's primary objection to placing the splitters on the MDF is that it takes approximately one third more space there than would the relay rack mounted splitter. BellSouth acknowledges that line sharing requires at least some space on the MDF (4 89-type connector

⁵⁹ Ex. 21 (Georgia xDSL Docket and Incorporated Settlement).

⁶⁰ Tr. 391-93, 837, 844-845.

⁶¹ Tr. 845.

⁶² Tr. 393.

blocks). Under Covad's proposal, six frame mounted splitters would replace for 4 connector blocks.⁶³ But Covad's proposal does not waste any other space in the central office. In contrast, BellSouth's proposal uses both frame space and central office space necessary for the bay in which the rack mounted splitter is placed. Overall, BellSouth's configuration uses more, not less, central office space.⁶⁴ Furthermore, the evidence showed that BellSouth itself originally proposed that the splitter be placed either on the MDF or on a relay rack nearby.⁶⁵ That proposal was only changed when BellSouth began to require the use of the bantam test jack, which took up too much space between shelves to allow sufficient access to the splitter on the MDF.⁶⁶ If the bantam test jack were not required, as Covad proposes, this issue would be resolved.

Covad's proposed contract language recognizes that there may be instances in which BellSouth cannot place the splitter on or near the MDF. Nonetheless, the forward looking cost of line sharing must be based on the most efficient network configuration available. Thus, the costs of line sharing must assume the use of the splitter on the MDF. Any time BellSouth places the splitter anywhere other than on or very near the MDF, it should be deemed to be the "cost causer" of the increased number of tie cables and jumpers, and resulting increase in cost to provision line sharing. Therefore, if BellSouth chooses an inefficient location for equipment used by competitors, which it has,⁶⁷ then Covad should not have to bear the cost of such inefficient and discretionary engineering practices. Rather, BellSouth should bear the extra costs caused by its inefficient practices.

Issue 18: What should the provisioning interval be for the line sharing unbundled network element?

⁶³ Tr. 845.

⁶⁴ Tr. 457. ("Mr. Williams has failed to account for the variety of resources that a remotely located splitter rack utilizes (e.g., the relay rack/bay, the pathway/ladder racks to hold the cabling, supports for ladder racks, floor space occupied by the bay and its associated aisle space."); Tr. 846.

⁶⁵ Tr. 847; Ex. 31.

⁶⁶ Tr. 850.

⁶⁷ Tr. 395.

Covad's Position ** The Commission should establish 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.

Covad's witness Riolo testified that the Commission should establish a shorter interval for provisioning line shared loops than for stand alone loops, recognizing that all the work done to provision a line shared loop is done within the central office. Once the splitter is installed in a central office, the work required to provision line sharing is minimal.⁶⁸ First, because the loop is being used to provide voice service, both BellSouth and the ALEC know that the loop is fully and properly provisioned to the customer premise. Covad witnesses testified that “line sharing does not require any work to be performed outside of the central office and the existing customer telephone number and cable pair are both reused.”⁶⁹ Moreover, the only central office work necessary to provision line sharing merely entails wiring the splitter configuration into the existing service, which involves removing one cross-connect on the MDF or COSMIC and replacing it with two new cross-connects.⁷⁰ Once Covad places an order for a line-shared loop, BellSouth just makes these three cross connections in the central office – a process that takes less than 10 minutes.⁷¹ Even BellSouth admitted that, in the worst case scenario (the most difficult network configuration dreamed of), the work necessary to complete a line shared loop would take a maximum of 36 minutes.⁷² BellSouth acknowledged that provisioning a line shared loop in central offices with the more common configurations would take closer to 20 minutes.⁷³

Given the limited work required to provision line sharing, the Commission should establish an interval of no more than 24-hours for line sharing. Because this proposed interval is

⁶⁸ Tr. 404.

⁶⁹ Id.

⁷⁰ Tr. 392.

⁷¹ Tr. 404.

shorter than the current interval offered by BellSouth, Covad proposes a “step down” process to drive the interval to 24 hours within 90 days.⁷⁴ Under this proposal, for the first 30 days after the Commission’s order, the line sharing interval for loops that do not require conditioning would be three days. In the following 30-day period the interval would be 2 days. At the conclusion of the 30 day period, the permanent 24-hour interval would take effect in Florida. Establishing a 24-hour interval for line shared loops will encourage BellSouth to utilize efficient practices. For line shared loops requiring conditioning, however, Covad recognizes that additional work effort is involved, and therefore proposes a five-business day interval.

Other state commissions have agreed with this analysis. As the New York Public Service Commission recently noted, a line shared loop should be delivered in less time than a standard loop.⁷⁵ Moreover, the Illinois Commerce Commission adopted the step-down interval that Covad proposes here in Florida. The Illinois Commission determined that because line sharing uses a working loop, which the ILEC has already provisioned to the customer’s premises, it is reasonable that with experience accrued over time, the ILEC can provision line sharing to ALECs in one business day.⁷⁶ The Illinois Commission further recognized that the interval it adopted will promote advanced services deployment since “consumers would reasonably anticipate that data service, provided over an already existing line to his or her home, would be provisioned more quickly than if an entirely new line had to be installed.”⁷⁷ Shorter provisioning

⁷² Tr. 867; Ex. 32.

⁷³ Id.

⁷⁴ Tr. 404.

⁷⁵ *Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services*, Case No. 00-C-0127, Opinion and Order Concerning Verizon’s Wholesale Provision of DSL Capabilities, Op. No. 00-12, at 5 (N.Y. P.S.C. Oct. 31, 2000)(“*NY Line Sharing Order*”).

⁷⁶ *Covad Communications Company and Rhythms Links Inc., Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone d/b/a Ameritech Illinois and for an Expedited Arbitration Award on Certain Core Issues*, Dkt. 00-312, 00-313, *Arbitration Decision*, Illinois P.S.C. August 17, 2000 at 26 (“*Illinois Line Sharing Order*”).

⁷⁷ Id.

intervals are required, given the huge demand for xDSL service, and the fact that the consumer's choice of carrier is driven, in part, by the length of time it will take to receive service. As a result, shorter provisioning intervals are vital to Covad's ability to compete against BellSouth, other ALECs, and other high-bandwidth service providers. Moreover, with BellSouth's announced plans to provision up to 600,000 loops for its own retail DSL service in 2001, BellSouth cannot argue that it has yet to develop the processes necessary to provision line shared loops. As BellSouth should be able to achieve even more efficient and shorter intervals as it gains more experience, and OSS upgrades are fully implemented, Covad's stepped-down interval process is reasonable and should be adopted by this Commission.

Issue 21: Should BellSouth provide accurate service order completion notifications for line sharing orders?

Covad's Position ** Yes. Until BellSouth fixes its system so that completion notices that are sent to Covad actually and accurately reflect completion of the provisioning work, BellSouth should provide Covad with a daily list of line shared orders actually completed the previous day.**

BellSouth's line sharing systems were devised to allow the possibility for completion notices to be sent to Covad, irrespective of whether the actual, physical cross connection work in the central office had been done to provision a line shared loop. As a result, in negotiations on this issue, Covad asked for two things: (1) that BellSouth update daily the COSMOS/SWITCH report Covad must use to check the status of an order; and (2) that BellSouth provide Covad will a daily listing of line shared circuits on which work had actually been completed the day before. Although negotiations got Covad no where, concerns about bringing this issue before the Commission apparently convinced BellSouth to update the SWITCH/COSMOS system daily. According to BellSouth witness Williams, BellSouth implemented the software changes

necessary to update the report daily just the weekend before the hearing.⁷⁸ Prior to the hearing, BellSouth had insisted that Covad raise this issue through Change Control Process, arguing that the collaborative could not change how often the report was updated.⁷⁹ Apparently, BellSouth can unilaterally change its position on what requires approval from Change Control and did so to avoid an adverse ruling by this Commission.

Covad has no experiential evidence that the SWITCH/COSMOS report is being updated daily. As a result, we ask that BellSouth take the steps Qwest took to provide a daily listing of completed orders. This will alleviate any concerns about the accuracy of the SWITCH/COSMOS report. Qwest and Covad worked successfully under this system until both parties determined that Qwest's web-based report was accurate and provided Covad with the information it needs to confirm that the work to provision line shared loops has been done.⁸⁰ At that time, Qwest and Covad suspended the use of the daily report. Once we reach the same level of confidence with the BellSouth SWITCH/COSMOS report, Covad is equally open to suspending the daily report.

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

Covad's Position ** 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. **

BellSouth has deployed throughout its central offices the Sunset ADSL test set for use in provisioning its retail line shared loops. With the test set, BellSouth has been able to successfully provision over 303,000 line shared loops throughout the region, far outpacing any competitive provider. BellSouth uses another test set for competitor lines, which although

⁷⁸ Tr. 858.

⁷⁹ Tr. 859.

useful, does not provide the full functionality of the Sunset ADSL test set. Because Covad and BellSouth use the same equipment, the Sunset test set would be equally effective for trouble shooting Covad's line shared loops.⁸¹ In fact, that's exactly how Covad learned about this test set. While troubleshooting some problems on Covad line sharing orders, BellSouth central office technicians picked up the Sunset system and were able to resolve the problem.⁸² Now, all that Covad seeks is the ability to have BellSouth technicians continue to use those test sets in a repair and maintenance scenario.

BellSouth's first objection to using this Sunset test set for repair and maintenance is that it does not believe it is legally obligated to do so. Even if that were true, BellSouth does not deny this Commission's authority to impose such an obligation. Using the same test set for BellSouth retail orders and for Covad orders would be true parity treatment. BellSouth's second biggest objection to this request seems to be that all ALEC equipment may not be compatible with the Sunset test set.⁸³ That cannot be sufficient to bar Covad's use of the helpful piece of equipment, especially where it has already been deployed in the BellSouth central offices for use on retail services. Covad is not aware of any of ALECs actually ordering line shared loops in the BellSouth region. Nonetheless, other ALECs would certainly be able to benefit from the Sunset test set, if their equipment were compatible. If not, they would not seek its use.

Again, we hear the complaint that terms and conditions Covad wins must be applied to other ALECs. We acknowledge that, but it should not be used to shield BellSouth from improving its processes and intervals. A high tide raises all ships and Covad would be more than

⁸⁰ Tr. 198.

⁸¹ Tr. 178-79.

⁸² Id.

⁸³ Tr. 863.

happy to have performance for all ALEC services improve as a result of its arbitration with BellSouth. We long for the day when our biggest competitive obstacle is not our sole supplier.

Issue 23: Should Covad have access to all points on the line shared loop?

Covad's Position ** Yes. Whenever the line in the central office has both data and voice traffic on it, Covad needs access to all points of interconnection. This allows Covad to efficiently troubleshoot problems and replaces the unnecessary and expensive bantam test jack. **

It is essential that the Commission require BellSouth to provide Covad access to the shared physical loop for testing purposes. Covad also must have direct, physical access to *any* loop containing a high-bandwidth network element at the point where the combined voice and data loop leaves the central office for purposes of conducting testing associated with maintenance and repair.⁸⁴ In order to have such access, Covad must be able to attach test equipment to the line shared loop's termination on BellSouth's MDF and all points in between where combined voice and data exist on the circuit.⁸⁵

BellSouth has agreed to give test access only to the splitters themselves through the bantam test jack. The bantam test jack fails to provide Covad with the type of testing necessary to get its line shared loops up and working in a timely fashion or to effectively trouble shoot problems with those loops. First, the bantam test jack provides a view of the loop only from the splitter out to the customer's premise.⁸⁶ It does not allow Covad to test whether the cross connections in the central office have been completed or whether the splitter card is seated properly.⁸⁷ The exact same view of the loop can be achieved by testing at the cross connection at the frame, the type of test access Covad is seeking in this case.⁸⁸ While lacking in utility for

⁸⁴ Tr. 406.

⁸⁵ Tr. 317.

⁸⁶ Tr. 852.

⁸⁷ Tr. 852-54.

⁸⁸ Tr. 876-77.

Covad, the bantam test jack adds seriously and unnecessarily to the cost of the splitter configuration, increasing Covad's costs by as much as 30%-40%.⁸⁹ No other ILEC adds this cost to a line sharing configuration and other ILECs allow Covad significantly more test access to facilitate the line sharing process.⁹⁰

Covad needs direct physical access to the loop at all cross-connect points of the splitter at the MDF or the IDF for testing data services. ALECs must be able to isolate troubles on the loop to identify what elements of the DSL or voice network, if any, need repair. With test access at the MDF and all points on interconnection where voice and data are carried on the same loops, Covad can insure that it is working on the correct customer's line by using the automatic number identification ("ANI") feature and Covad would be able to verify that the proper cross connect has been made for the customer's service.⁹¹ Moreover, Covad could isolate problems rather than having to turn its problem over to BellSouth for resolution -- for an unknown amount of time. BellSouth utilizes this same test access to isolate trouble for its own customers -- Covad merely seek the same opportunity to test for troubles for its own customers as BellSouth does.⁹²

For these reasons, the Commission should grant Covad's request for full test access to all points of interconnection of a line shared loop. Additionally, the Commission should not allow BellSouth to impose on Covad the limitations of the bantam test jack coupled with its exorbitant cost.

Issue 24: Are the rates proposed by BellSouth for line sharing compliant with TELRIC pricing?

Covad's Position ** 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

⁸⁹ Tr. 392, 851.

⁹⁰ Tr. 851,853.

⁹¹ Tr. 460.

⁹² Id. If the Commission denies Covad's request for full test access, then the Commission should require BellSouth to resolve trouble reports on those loops within 4 hours.

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.**

Covad asks this Commission to establish pricing for line sharing that is pro-competitive, consistent with a forward-looking environment, and should allow line shared DSL services to prosper in Florida.⁹³ A comparison of the contrasting rates can be seen on ERYK/JPR-5 (part of composite exhibit 12). The disparity is easily explained. BellSouth has not employed an efficient methodology to provision line sharing. As explained in the testimony of Ms. Kientzle and Mr. Riolo, many of the task times quoted involve unnecessary manual work or are simply overstated. In addition, the splitter location chosen by BellSouth maximizes, rather than minimizes, the number of cross connections necessary in the central office. Mr. Riolo was the only witness who testified during the hearing about his actual engineering experience. Mr. Riolo has years of hands-on engineering experience to back-up the realistic estimations and assumptions he has made. As a result, his recommendations and estimates must carry more weight with this Commission than those of the BellSouth witnesses, who had not performed the actual work involved and relied on the estimates of others in their organization who were not made available for cross examination.⁹⁴

There is no dispute between Covad and BellSouth that the recurring charge for the high-frequency portion of the local loop should be \$0.00. There are, however, a number of categories of costs for which forward looking rates must be set by the Commission.

⁹³ At this time, however, Covad only requests that the Commission establish rates for line sharing over home-run copper. As discussed below, there are other line sharing arrangements over fiber-fed loops, however, BellSouth has produced no cost studies or other information on pricing of line sharing over fiber-fed loops.

⁹⁴ It should be noted as well that the BellSouth witnesses presented no studies or workpapers to support the estimates and assumptions that underlie the BellSouth cost study.

1. BellSouth's Nonrecurring Charges for Splitters Are Greatly Inflated (J.4.1, J.4.2)

A splitter is the passive, non-electrical device that literally splits the voice traffic on a loop from the data traffic on that same loop.⁹⁵ Located in the central office, the splitter is a simple piece of equipment that takes minutes to install.⁹⁶ Although BellSouth provides no specific information about how long BellSouth believes it takes to install a splitter, there are numerous unexplained costs in its recurring cost study indicating that BellSouth is assuming excessive work times and costs for splitter installation on a recurring basis.

Although the actual installation work is recovered in the recurring charge, for which BellSouth proposes charges of \$201.46 for a 96 port splitter and \$50.37 for a 24 port splitter, BellSouth also proposes a \$377.72 nonrecurring charge every time a ALEC orders splitter capacity from BellSouth. This same charge applies irrespective of whether an ALEC orders 24 ports on a splitter or the entire 96 ports on one splitter. Although there is no written explanation for these charges, BellSouth's cost study reveals that it assumes it will take:

- 4.0 hours for "Job Grade 56" to perform engineering work;
- 3.0 hours for the "Network and Engineering Planning" group to perform "Circuit Capacity Management";
- .74 hours for the "Complex Resale Support Group" to perform "Complex Resale Support";
- .67 hours for the "Systems Designer w/ Sales Com" to perform "Complex Resale Support"; and
- .50 hours for the Customer Point of Contact to perform its work.⁹⁷

It is this 8.91 hours of work that results in the high nonrecurring charges proposed by BellSouth.

⁹⁵ Tr. 432.

⁹⁶ Id.

⁹⁷ BellSouth Cost Study, Nonrecurring Cost Development J.4.1 – Line Sharing, per system 96 Line Capacity in the Central Office (LSOD) at 000187.

BellSouth's proposed nonrecurring charges for splitters are inappropriate. It makes no sense that ALECs must pay the same amount for work whether they buy 24 ports or 96 ports.⁹⁸ Second, the actual installation work for splitters is captured in BellSouth's recurring charges. This proposed nonrecurring charge results from BellSouth's claims that it must manually "build" a database and assign circuits to the splitter.⁹⁹ Notably, BellSouth provides no explanation for this work and Covad only became aware of this explanation as a result of cross examination in other proceedings. Nonetheless, a forward looking network would certainly assign the splitter space electronically.¹⁰⁰ Thus, the forward looking cost of performing this work is zero. Likewise, no installation work is required for ALEC owned splitters, so BellSouth's proposed charge J.4.7 should similarly be rejected.

2. BellSouth's Recurring Charges for Splitters Are Unreasonable and Unsupported (J.4.1, J.4.2)

BellSouth proposes a recurring cost in cases where BellSouth owns the splitter of \$201.46 a month for 96 ports and \$50.37 for 24 ports on a splitter. This charge apparently is intended to recover BellSouth's material price of the splitter, installation of the splitter, including cabling and associated engineering. There are two principle problems with these recurring rates. First, BellSouth starts with inappropriately high material investment rates. Second, to add insult to injury, BellSouth applies unsubstantiated and improper "loading factors" that drive the price skyward. Both of these issues are discussed below.

Unnecessarily Inflated Material Costs

While BellSouth did not provide adequate detail to support its proposed recurring charges, Covad witnesses nonetheless introduced evidence proving that these recurring charges

⁹⁸ Tr. 441.

⁹⁹ Tr. 441.

should be reduced significantly. First, BellSouth's proposed recurring splitter cost study includes money for purchasing and installing a bantam test jack.¹⁰¹ Second, the BellSouth proposal includes unnecessary costs for additional cabling as a result of BellSouth's inefficient placement of the splitter 150 feet from the Main Distribution Frame.¹⁰²

The bantam test jack was a testing mechanism proposed by BellSouth for line sharing. Although it is not clear from the cost study, there is about **** BEGIN PROPRIETARY** ██████████ **END PROPRIETARY **** of charges for "Test Access Shelf."¹⁰³ This test jack -- the bantam test jack -- was not requested by ALECs and is not used by any other ILEC in the country. The bantam test jack is of very little, if any, use to Covad. The bantam test jack allows an ALEC to test only from the splitter to the outside plant.¹⁰⁴ It does not allow testing of the data line from the splitter back to the collocation area. Moreover, the evidence showed that BellSouth could purchase a splitter with test functionality for only \$63.36, more than it currently pays for the splitter.¹⁰⁵ BellSouth has made no showing of why the bantam test jack has to be used, especially when its limited utility is compared to its enormous price. BellSouth's sizable increment in investment calls into question the efficiency of the testing arrangement that BellSouth has imposed on ALECs.

Second, BellSouth's recurring costs are unnecessarily inflated by assuming that three cables of 150 feet each are necessary for each splitter installation, an estimate that was later reduced to 75 feet -- although the price did not change. Moreover, BellSouth has produced no evidence that either 75 or 150 feet is a reasonable average for cable. As Covad's witness testified, efficient use of central office space requires ILECs to place splitters on or near the

¹⁰⁰ Id.

¹⁰¹ Tr. 425.

¹⁰² Tr. 426.

¹⁰³ Id.

Main Distribution Frame. As a result of such placement, cable costs for splitters would be greatly reduced.¹⁰⁶

Additionally, BellSouth includes the cost of *****BEGIN PROPRIETARY [REDACTED] END PROPRIETARY***** as an input for the bay shelf material. Nonetheless, the evidence showed that the material only cost is *****BEGIN PROPRIETARY [REDACTED] END PROPRIETARY*****. Furthermore, BellSouth's material investments are unnecessarily inflated by erroneous frame investment assumptions, and by assuming that only 8 splitters, rather than the 14 recommended by Siecor, will be placed on each bay.¹⁰⁷ These erroneous material cost assumptions unnecessarily raise the cost of the splitter.

Erroneous and Inappropriate Loading Factors

The problem of the bantam test jack, unnecessarily long cabling, bay, frame and other material investment assumptions is further exacerbated by the fact that BellSouth applies its various factors (materials, installation, in plant, power) to installation of splitters. As a result, the cost of the materials ***** BEGIN PROPRIETARY [REDACTED] [REDACTED] END PROPRIETARY ***** for the splitter grows exponentially to over \$10,011.11 investment for a single 96 port splitter. As discussed in detail in the Kientzle/Riolo testimony, BellSouth starts with inputs that are incorrect (cabling is too long, bantam test jack is unnecessary, bay price is wrong) and then adds factors that are either wrongly applied or inappropriate for splitter installations.¹⁰⁸ Specifically, the following is a brief summary of the changes that must be made to the recurring splitter charges proposed by BellSouth.

¹⁰⁴ Tr. 852-54.

¹⁰⁵ Tr. 426.

¹⁰⁶ Tr. 427.

¹⁰⁷ Tr. 428-29.

¹⁰⁸ Tr. 431-35.

- BellSouth's actual investment amount must be reduced to remove costs for the bantam test jack, cabling that's too long, and the incorrect bay cost. The changes suggested by Covad testimony reduce investment charges by 36%.¹⁰⁹
- The Siecor recommended capacity for one bay is 14 splitters. Mr. Riolo confirmed that, in his opinion as an engineer, more than 8 splitters could and should be placed on each bay. Therefore, the number of splitters per bay should be increased further decreasing the recurring charge.¹¹⁰
- Application of generic materials and installation factors for complex digital equipment to installation of a splitter is inappropriate. Splitters have no moving parts, so BellSouth's use of materials and installation factors for digital circuit -pair gain equipment is inappropriate. Mr. Riolo explained in detail the simplicity of installing a splitter -- it has only four screws. Thus, these factors should not be applied to splitter installation.¹¹¹
- Likewise, because BellSouth has placed ALEC splitters in the common areas collocation space, land and building factors are also inappropriate. BellSouth is already recovering these land and building costs in collocation charges.¹¹²
- The Commission should remove the power component loading factor. Splitters have no power. Therefore, the application of power component loading factors is ridiculous.¹¹³

Moreover, since BellSouth has chosen a more costly alternative for splitter placement in the central office (relay rack mounted instead of frame mounted), BellSouth should not be permitted to pass that cost along to Covad. These corrections, along with elimination or adjustments to BellSouth's assumptions and factors application would reduce BellSouth's recurring price for 96-line splitters from \$201.46 to \$89.11. This rate is consistent with the forward looking costs proposed by Ms. Kientzle/Mr. Riolo. These reflect reasonable forward looking rates for line sharing and they should be adopted by the Commission.¹¹⁴

3. BellSouth's Proposed Nonrecurring Charge for the Line Shared Loop is Overstated (J.4.3)

¹⁰⁹ Tr. 428.

¹¹⁰ Tr. 429.

¹¹¹ Tr. 432.

¹¹² Tr. 434.

¹¹³ Tr. 435.

¹¹⁴ Tr. 437.

BellSouth calls its installation charge for the line shared loop a “per Line Activation in the Central Office.” (Element J.4.3) As usual, BellSouth produces not a shred of evidence justifying these charges, estimates or assumptions.¹¹⁵ This nonrecurring charge of \$32.07 for the first activation purportedly seeks to recover costs incurred to actually process an order and to make the few cross connects in the central office required to provision a splitter. The evidence shows that this charge is overstated.¹¹⁶

The two engineering tasks BellSouth includes are completely unnecessary. Line sharing requires no engineering. The line shared loop is already in place and supporting voice services. There is no need to “engineer” anything. Additionally, the high fallout rate for the AFIG group conflicts with systems an efficient forward- looking provider would have in place.¹¹⁷

Similarly, BellSouth has overstated the time necessary to provision a line shared loop. Line sharing requires no work to be performed outside of the central office as the existing customer telephone number and cable pair are both reused. Moreover, the only central office work necessary to provision line sharing entails wiring the splitter configuration into the existing service, which involves removing one cross-connect on the MDF or COSMIC and replacing it with two new cross-connects. This process should easily be accomplished in less than 10 minutes.¹¹⁸ No additional time or work is necessary. BellSouth witnesses even testified that the work to provision a line shared loop should take about 20 minutes.¹¹⁹ By BellSouth’s own admission, in the most complicated scenario, it would not take more than 36 minutes to provision a line shared loop.¹²⁰

¹¹⁵ Tr. 448.

¹¹⁶ Tr. 447-450.

¹¹⁷ Tr. 449.

¹¹⁸ Tr. 450.

¹¹⁹ Tr. 867; Ex. 45.

¹²⁰ Id.

Finally, BellSouth includes five different tasks for line station transfer, a process by which a subscriber's outside plant facility is transferred to a different facility, so as to free up the original facility for use on another service. The evidence shows that BellSouth routinely performs these for their own loops.¹²¹ The evidence further demonstrates that line station transfers are a routine part of outside plant management and maintenance, already recovered in BellSouth's recurring charges for voice service.¹²² BellSouth should not be allowed to charge for this until it proves that it will not include double recovery and that costs for competitors are treated in the same way as costs for retail customers. BellSouth has failed to make either of those showings.¹²³

4. Recurring Rates for Line Shared Loops (J.4.3)

On January 29, 2001, BellSouth and Covad agreed to an interim line sharing OSS rate of \$.61 per loop per month, subject to true-up. Furthermore, BellSouth committed that it would not seek permanent rates for line sharing OSS (Element J.4.3 recurring) until it notified Covad and until the Telcordia OSS package was fully deployed and operational. Moreover, BellSouth has agreed to initiate a docket for establishment of these rates, rather than filing them as part of its SGAT. When such charges are ultimately proposed, the Commission should closely scrutinize them.

Issue 25: 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's Position ** 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

¹²¹ Tr. 451.

¹²² Tr. 452.

¹²³ Tr. 452.

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.

The fact that we were forced to litigate this issue testifies to the sheer intransigence of BellSouth in the negotiation process. All Covad has sought from the beginning is a way to reduce costs, if possible, when Covad leaves a collocation space. Since Covad will continue to hold and pay for the collocation space while it negotiates with another ALEC to take the prepared space, BellSouth intervals will not be impacted.¹²⁴ Likewise, BellSouth can either provide the information to us about the next ALEC or send a brief email to the next ALEC on the waiting list, alerting them that prepared space is being abandoned and providing them with a contact at Covad. Throughout the negotiations, we simply asked BellSouth to help us devise a system to possibly reduce costs.¹²⁵ They refused. The Commission should order BellSouth to send a single email to the next ALEC on the waiting list or provide us with information about that ALEC so we can try to make arrangements with them.

Issue 29: What rates should Covad pay for collocation?

Covad's Position ** The Commission should reduce specific task and rate elements as recommended by Covad and reduce the remaining rates by a reasonable amount on an interim basis, subject to true-up, until the generic collocation cost case is completed.

BellSouth's collocation cost studies fails to substantiate its enormous task time assumptions, unnecessary work activities and unbelievable material cost assumptions. The studies do not support this Commission's adoption of the BellSouth proposed charges, even on an interim basis. The evidence in the record shows that Mr. Riolo, an engineer with over 30 years experience in telecommunications and one with extensive experience managing collocation on behalf of a major ALEC, reviewed and critiqued BellSouth's studies and has offered an

¹²⁴ Tr. 335.

¹²⁵ Tr. 309.

explanation of the proper task times and material assumptions necessary for collocation. Among his recommendations are the following:

- BellSouth's assumption that it will take 51.25 hours to process a single collocation application (equating to \$3,760 charge to ALECs) strains credibility. Mr. Riolo described the simple tasks involved in viewing an application and has seen ILEC personnel perform these task many times. This task should not take longer than 2 hours.¹²⁶
- To process a firm order for collocation, BellSouth dramatically inflates task times. For example, BellSouth assumes that a single group, the INAC, will take 20 hours to process a firm order for collocation. There is not a single explanation for this work. This rate must be rejected.¹²⁷
- Collocation Cage Construction is grossly over priced. BellSouth material costs far exceed those found even in a public catalog. Likewise, Mr. Riolo testified that he had constructed caged collocation for less than \$4000. BellSouth's charges should be limited to that amount.¹²⁸
- The security systems charges reflect a trend in BellSouth cost studies that greatly increases rates to ALECs. For example, the BellSouth documentation provided, scarce as it was, showed that a security system could support between 2000 and 3000 cards. For purposes of calculating rates, BellSouth chose to use 2000 cards, thus increasing Covad's costs. Additionally, BellSouth assumed there would be a 25% problem occurrence on every aspect of the security system. If BellSouth systems function that poorly, they should be repaired. The costs of perpetuating a nonfunctional system should not be passed on to Covad.¹²⁹
- Cross connection charges are likewise unnecessarily high. For recurring charges, BellSouth assumes a cable length of 300 feet, which is inconsistent with BellSouth cable length charge in the line sharing study. That length should be cut in half. On the nonrecurring side, BellSouth assumes it will take a skilled technician 25 minutes to perform a single 2-wire cross connection. These are among the most simple and routine of tasks in a central office and can easily be accomplished within 3 minutes.¹³⁰
- BellSouth proposes that it will take 28 hours of engineering work to produce cable records in connections with a collocation arrangement and 14 hours for a voice grade cable record for collocation. Both assumptions strain credibility. Mr. Riolo testified that he had witnessed this work being done many times and that cable records can and should be generated in a matter of minutes. BellSouth proposed task times must be reduced.¹³¹

¹²⁶ Tr. 343-45.

¹²⁷ Tr. 346-47.

¹²⁸ Tr. 348.

¹²⁹ Tr. 349

¹³⁰ Tr. 351.

¹³¹ Tr. 352.

These examples lend credence to Covad's proposal that all the BellSouth rates be reduced by a reasonable percentage. The egregious examples illustrate why BellSouth cost studies and, thus, the rates generated by those studies are insufficient as a matter of law, even for interim rates.

Issue 30: Should BellSouth resolve all loop "facilities" issues within thirty days of receiving a complete and correct local service request from Covad?

Covad's Position ** BellSouth should resolve bad pair facilities issues within 7 business days, new construction facilities issues within 30 days, and other facilities issues in the same amount of time as it resolves facilities issues for BellSouth retail POTS service.

On this issue, BellSouth first tried to distract the Commission from setting intervals for resolving facilities problems by arguing that it needed to retain flexibility for times of natural disaster.¹³² Luckily for BellSouth, the parties have agreed to Force Majeure language in their contract that relieves BellSouth of any and all obligations under the contract in the event of a natural disaster.¹³³ Once that pre-textual problem is removed, the real issue remains BellSouth's reluctance to commit to any levels of performance for Covad.

As demonstrated by Exhibit 39, Covad is willing to allow BellSouth to notify Covad when it cannot meet the proposed intervals for resolution of facilities problems. Although Covad has proposed reasonable, achievable intervals, Covad acknowledges that there may be occasional problems that are unanticipated.¹³⁴ For that reason, Covad's language allows for some exceptions from the intervals. Unlike BellSouth, Covad has attempted to compromise on this issue. But all we are asking for is a defined interval in which BellSouth must strive to resolve pending facilities problems.¹³⁵ Covad has placed hundreds of orders with BellSouth that were held "pending facilities." Because there is no deadline to fill these orders, many linger for days or months. Covad is trying to get BellSouth to focus on resolving these issues in a timely way.

¹³² Tr. 669.

¹³³ Tr. 712.

¹³⁴ Ex. 39;Tr. 329.

Without a clean cut interval, BellSouth will never resolve problems in a way that enables Covad to deliver customer satisfaction.¹³⁶ Covad cannot continue to allow customers to languish for weeks or months in pending facilities queues, without any guarantee from BellSouth about when service will be provided.¹³⁷

BellSouth argues on the one hand that “historically, less than 5% of all orders have required greater than 30 days to complete,”¹³⁸ but on the other hand, BellSouth will not agree to Covad’s proposed intervals. If BellSouth’s data is accurate, what harm results to BellSouth if this Commission establishes reasonable intervals for resolving pending facilities issues. If BellSouth’s data is inaccurate or more DSL type loops experience facility problems than normal, the Commission can understand why Covad believes it is so important to set some type of reasonable interval for resolving these problems.

Issue 31: Should BellSouth send Covad both a paper and a duplicate electronic bill and in either instance, when should the bill be due?

Since the hearing, this issue has been resolved by parties.

Issue 32(a): Should Covad be required to pay amounts in dispute as well as late charges on such amounts?

Covad’s Position ** Covad should not be required to dispute a bill by itemizing each bills amount, if Covad finds systemic or recurring problems. Additionally, BellSouth should pay Covad 1.5% monthly interest on amounts erroneous charged by BellSouth that Covad paid in error. **

Throughout the course of negotiation, this issue has changed somewhat. BellSouth now agrees that Covad should not have to pay billed amounts that are subject to Bone Fide Dispute.¹³⁹ Nonetheless, BellSouth’s idea of what constitutes a Bone Fide Dispute is extreme. Under

¹³⁵ Tr. 327.

¹³⁶ Tr. 318.

¹³⁷ Tr. 311, 327.

¹³⁸ Tr. 671.

¹³⁹ Tr. 891.

BellSouth's proposal, to dispute a bill, Covad would have to file a specific dispute form.¹⁴⁰ On the form, Covad would have to itemize the disputes against specific charges. BellSouth would also require Covad to use what's called a Q account number. Moreover, BellSouth would require that Covad be specific on each and every disputed item and to provide written documentation at the time of filing the dispute.¹⁴¹ If we fail any one of these requirements, then it is not considered a Bone Fide Dispute. If a dispute is not considered Bone Fide, then Covad is subject to collection activity, late penalties and termination of service.¹⁴²

On the other hand, if Covad is rushed to pay its bills and does not want to be subject to any late fees for failure to adequately document a dispute, Covad will pay the amounts charged by BellSouth. If BellSouth and Covad later determine that BellSouth erroneously charged, and Covad erroneously paid, an amount billed, BellSouth proposes that it should not be obligated to pay Covad interest on the money wrongfully charged and held.¹⁴³ The evidence showed that exact event took place. BellSouth billed Covad over \$263,000 erroneously and Covad paid that amount.¹⁴⁴ After reviewing the bills, Covad disputed the amount. But Covad received no compensation for the months, and in some cases, almost a year during which BellSouth profited from wrongfully assessed bills.

Covad's proposal is more reasonable. Covad will provide specific documentation in support of a Bone Fide Dispute where it is available. However, when Covad finds significant and systemic billing errors, Covad is not obligated to itemize each of those. Additionally, BellSouth is entitled to charge interest on late payments. That same amount of interest will be

¹⁴⁰ Tr. 900.

¹⁴¹ Tr. 633; Ex. 20 ("A Bone Fide dispute does not include a refusal to pay all or part of the bill or bills when no written documentation is provided to support the dispute.")

¹⁴² Tr. 633; Ex. 20.

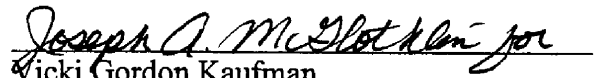
¹⁴³ Tr. 634.

¹⁴⁴ Tr. 903.

paid to Covad for any billed amounts BellSouth collects wrongfully from Covad. Interest will be paid for the duration of the time BellSouth wrongfully held Covad's money.

These improvements to the billing dispute section of the contract insure that BellSouth's bills are paid, when proper. But, it also recognizes Covad's legitimate interest in challenging systemic billing issues without the onerous itemization of those disputes. Secondly, Covad's proposed language achieves parity between late payment penalties BellSouth seeks and interest due to Covad when BellSouth erroneously bills, collects and holds Covad's money. The Commission should require BellSouth to accept these improvements to the billing dispute language.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the Covad Communications Post-Hearing Brief has been furnished by (*) hand delivery this 19th day of July, 2001, to the following:

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