

VOTE SHEET

SEPTEMBER 18, 2001

RE: Docket No. 001797-TP - Petition by DIECA Communications, Inc. d/b/a Covad Communications Company for arbitration of unresolved issues in interconnection agreement with BellSouth Telecommunications, Inc.

LEGAL ISSUE A: What is the Commission's jurisdiction in this matter?
RECOMMENDATION: Staff believes that the Commission has jurisdiction pursuant to Chapter 364, Florida Statutes, and Section 252 of the Federal Telecommunications Act of 1996 (Act) to arbitrate interconnection agreements, and may implement the processes and procedures necessary to do so in accordance with Section 120.80 (13)(d), Florida Statutes. 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 required. This section requires this Commission to conclude the resolution of any unresolved issues not later than nine months after the date on which it received the request under this section. In this case, however, the parties have explicitly waived the nine-month requirement set forth in the Act.

APPROVED

COMMISSIONERS ASSIGNED: Jaber, Baez, Palecki

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

[Handwritten signatures in majority column]

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REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

11618 SEP 18 01

FPSC-COMMISSION CLERK

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Further, staff believes that while Section 252(e) of the Act reserves the state's authority to impose additional conditions and terms in an arbitration not inconsistent with the Act and its interpretation by the FCC and the courts, the Commission should use discretion in the exercise of such authority.

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

RECOMMENDATION: Staff believes the record does not provide sufficient evidence upon which a decision can be made as to whether or not to impose the disputed language addressing limitations on liability. Therefore, staff recommends that the Commission not impose the adoption of any disputed terms contained in the limited liability provision of the parties' interconnection agreement, whereby the parties would be liable in damages, without a liability cap, for a material breach of the interconnection agreement.

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

RECOMMENDATION: Staff recommends that the appropriate intervals for BellSouth to provision unbundled voice grade, ADSL, HDSL, or UCL loops for Covad should be:

Loop Type	Provisioning Intervals
Service Level 1 (SL1)	Three Business Days
Service Level 2 (SL2)	Four Business Days
ADSL, HDSL, or UCL	Four Business Days

Staff notes that these intervals apply to loops that do not require conditioning. Staff recommends that the provisioning interval should begin after Covad submits an error-free electronic order during BellSouth's normal retail business hours. Staff notes that when Covad submits orders outside of BellSouth's normal business hours, BellSouth should deem Covad's order as received at the start of business the following business day. Staff recommends that BellSouth should be allowed an additional day for manually submitted orders.

Staff recommends that these provisioning intervals should be included in the Interconnection Agreement. Further, staff recommends that BellSouth should be required to meet these intervals for at least 90 percent of SL1 and SL2 loop requests within any calendar month, which is derived from Rule 25-4.066(2), FAC. Staff notes that this rule only applies to BellSouth's retail service; however, staff believes that parity extends this benchmark to Covad as well. Staff notes that there is not enough record evidence to support a determination of the percentage of time that BellSouth should be required to meet for the intervals for ADSL, HDSL, or UCL loops.

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

RECOMMENDATION: Staff recommends that the appropriate provisioning interval for an IDSL-compatible/UDC loop should be five business days. Staff notes that this provisioning interval includes an additional day for end-users served by digital loop carrier (DLC) systems. Staff also notes that when an end-user's copper pair is served by a fiber-fed IDLC system, a "work around" is required. Staff recommends that when a "work around" is required, the appropriate provisioning interval should be ten business days.

Staff recommends that these provisioning intervals should begin after Covad submits an error-free electronic order during BellSouth's normal retail business hours. Staff notes that when Covad submits orders after BellSouth's normal business hours, BellSouth should deem Covad's order as received at the start of business the following day. Staff recommends that BellSouth should be allowed an additional day for manually submitted orders.

Staff recommends that these provisioning intervals should be included in the Interconnection Agreement. Staff notes that there is not enough record evidence to support a determination of the percentage of time that BellSouth should be required to meet this interval for IDSL-compatible/UDC loops.

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ISSUE 5c: What is the appropriate interval for BellSouth to "decondition" (i.e., remove load coils or bridged-tap) loops requested by Covad?

RECOMMENDATION: Staff recommends that the appropriate interval for BellSouth to "decondition" loops should be 14 days. Staff recommends that the provisioning interval should begin after Covad submits an accurate error-free electronic order during BellSouth's normal retail business hours. Staff notes that when Covad submits orders after BellSouth's normal business hours, BellSouth should deem Covad's order as received at the start of business the following day. Staff recommends that BellSouth should be allowed an additional day for manually submitted orders.

Staff also recommends that the 14-day loop deconditioning interval should be included in the Interconnection Agreement.

APPROVED

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?

RECOMMENDATION: Yes. Staff recommends that for modifications or cancellations due to personnel-related problems, the Commission should require BellSouth to credit Covad for the ordering and provisioning charges (if billed prior to the actual loop provisioning). Further, staff recommends that for modifications or cancellations due to facilities-related problems, the Commission should require BellSouth to credit Covad for any provisioning charges that have been billed prior to the actual loop provisioning.

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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?

RECOMMENDATION: BellSouth should not be required to participate in Joint Acceptance Testing at no charge when it provisions a non-designed xDSL loop to Covad. If Covad requests Joint Acceptance Testing for a non-designed xDSL loop, the appropriate charges should be BellSouth's time and material rates for the specified loop.

APPROVED

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

RECOMMENDATION: No. BellSouth should not be prohibited from unilaterally changing the definition of and specifications for its loops in its TR 73600. However, to the extent that certain technical specifications are explicitly stated in the parties' interconnection agreement, BellSouth should not be permitted to unilaterally modify these standards.

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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?

RECOMMENDATION: No. Covad should not be required to pay BellSouth's cost (i.e., BellSouth's rate) of the dispatch and testing for trouble tickets which meet the strict parameter as framed in the wording of this issue. However, Covad should pay for BellSouth's cost (i.e., BellSouth's rate) of the dispatch and testing in two instances: 1) If BellSouth determines the trouble condition resulted from a problem with a Covad customer's inside wiring that prevented the loop from functioning properly; or 2) if a subsequent trouble ticket for the given loop is not forthcoming within a 30-calendar-day period after the original trouble ticket was closed by BellSouth as a "No Trouble Found."

APPROVED

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?

RECOMMENDATION: The parties should include language in the interconnection agreement which reflects that when problems with BellSouth's electronic ordering systems prevent Covad from placing electronic orders that BellSouth normally accepts, Covad may order the services manually and pay only the electronic ordering rate. In addition, Covad may be assessed manual ordering charges when it submits an order manually because BellSouth does not have an electronic interface in place for that service.

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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?

RECOMMENDATION: The Commission should require BellSouth to credit to Covad an LSR OSS charge previously paid by Covad when Covad cancels a loop order because Covad's customer has canceled his/her loop order, due to BellSouth's failure to deliver the loop within the applicable loop provisioning interval specified in staff's recommendations in Issues 5a through 5c.

APPROVED

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

RECOMMENDATION: Staff recommends that BellSouth-owned splitters should be located in the ALEC common area of the central office where the ALECs are collocated. Staff recommends that Covad-owned splitters should be located in Covad's collocation space.

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

RECOMMENDATION: Staff recommends that the appropriate interval for BellSouth to provision the line shared loop should be four business days. Staff recommends that the provisioning interval should begin after Covad submits an error-free electronic order during BellSouth's normal business hours. Staff notes that when Covad submits orders after BellSouth's close of business hours, BellSouth should deem Covad's order as received at the start of business the following day. Staff recommends that BellSouth should be allowed an additional day for manually submitted orders.

Staff also recommends that these provisioning intervals should be included in the Interconnection Agreement. Staff notes that there is not enough record evidence to support a determination of the percentage of time that BellSouth should be required to meet this interval for line shared loops.

APPROVED

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

RECOMMENDATION: No. Staff recommends that BellSouth should only be required to test the continuity of the data circuit, including the high frequency spectrum.

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Additionally, language will be added to the order encouraging BellSouth to make the sunset test available to Covad at market test rates

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ISSUE 23: Should Covad have access to all points on the line shared loop?
RECOMMENDATION: No. Staff recommends that Covad should not be allowed to test all points on a line shared loop. However, staff recommends that BellSouth should be obligated to provide one of the following options:

- 1) allow Covad to test the loop at the point of interconnection on the customer's side of the splitter; or
- 2) offer Covad a cross-connect from the loop access point of interconnection on the splitter to Covad's collocation space.

Staff believes that these methods provide BellSouth with network security, while minimizing the costs to Covad.

APPROVED

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

RECOMMENDATION: Staff recommends that BellSouth should revise its line sharing cost studies to incorporate the adjustments noted in the analysis portion of its September 6, 2001 memorandum. A revised line sharing cost study that reflects staff's recommended adjustments should be filed with the Commission 30 days after the issuance of the order in this proceeding, and the associated rates should be included in the parties' agreement. Staff also recommends BellSouth incorporate all appropriate adjustments ordered by this Commission in Docket No. 990649-TP. Staff does not recommend rates be interim subject to true-up, but notes that when the Commission sets rates for ~~collocation~~, Covad will have the ability to adopt those rates at its discretion.

line-sharing

MODIFIED

Approved with noted modification and modification on p. 105 as discussed at conference

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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?

RECOMMENDATION: No. 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, BellSouth should not be required to notify the next ALEC on the waiting list to give that ALEC the opportunity to take that space as configured by Covad, and thus relieve Covad of its subsequent obligations.

MODIFIED

Approved with modification that language discussed on pages 111 and 113, at conference be adopted by staff's recommendation

ISSUE 29: What rates should Covad pay for collocation?

RECOMMENDATION: Staff recommends that BellSouth should revise its collocation cost studies to incorporate the adjustments noted in staff's analysis. A revised collocation cost study that reflects staff's recommended adjustments should be filed with the Commission 30 days after the issuance of the order in this proceeding, and the associated rates should be included in the parties' agreement. Staff also recommends BellSouth incorporate all appropriate adjustments ordered by this Commission in Docket No. 990649-TP. Staff does not recommend rates be interim subject to true-up, but notes that when the Commission sets rates for collocation, Covad will have the ability to adopt those rates at its discretion.

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

RECOMMENDATION: Yes. BellSouth should resolve all loop "facilities" issues in a nondiscriminatory manner within thirty calendar days of receiving a complete and correct local service request from Covad. However, if BellSouth is unable to resolve all loop "facilities" issues due to a major network outage(s) or congestion condition(s) within thirty calendar days of receiving a complete and correct local service request from Covad, BellSouth should be required to expedite the provisioning of these loop facilities.

APPROVED

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

RECOMMENDATION: No. Staff recommends that Covad should not be required to pay any legitimately disputed portion of a bill during the pendency of the dispute. Where the dispute is resolved in favor of BellSouth, Covad should be required to pay the amount it owes BellSouth plus applicable late payment charges. When a dispute is resolved in favor of Covad and Covad has previously paid the disputed charges, BellSouth should refund to Covad the monies with interest.

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ISSUE 33: Should this docket be closed?

RECOMMENDATION: No. The parties should be required to submit a signed agreement that complies with the Commission's decisions in this docket for approval within 30 days of issuance of the Commission's Order. This docket should remain open pending Commission approval of the final arbitration agreement in accordance with Section 252 of the Telecommunications Act of 1996.

APPROVED