

ORIGINAL

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**Sent:** Wednesday, October 05, 2005 4:41 PM  
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**Subject:** E-filing - Docket Nos. 041269-TP AND 040601-TP  
**Attachments:** Bayo Letter 10-5-05.doc

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 SEC   /   \_\_\_\_\_  
 OTH \_\_\_\_\_

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Docket No and title: In Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law Docket 041269-TP

In re: Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc pursuant to Section 252(b) of the Telecommunications Act of 1996 Docket No. 040601-TP

Filed on behalf of: DIECA Communications, Inc. d/b/a Covad Communications Company

Number of pages: 3

Document attached: Letter regarding BellSouth's claim that it has no §271 obligation to provide linesharing to Covad

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October 5, 2005  
Via E-mail

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Director, Division of Records and Reporting  
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**Re: Docket No. 041269-TP -- In re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law.**

**Docket No. 040601-TP -- In re: Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996**

Dear Ms. Bayo:

On September 27, BellSouth lifted a fragment from one of 473 footnotes in the FCC's 133 page *Report and Order* in WC-Dkt. 02-33 (the "*Wireline Broadband Order*"<sup>1</sup>), then advanced that fragment (without supplying a copy of the *Report and Order*) as support for BellSouth's claim that it has no § 271 obligation to provide linesharing to Covad. BellSouth claims that since the *Wireline Broadband Order* "made no mention of a Section 271 line sharing arrangement," one must not exist. BellSouth errs -- the *Wireline Broadband Order* does not discuss linesharing as a § 271 obligation because the proceeding had nothing to do with either linesharing or § 271. *Wireline Broadband* deals with a completely different issue -- whether ILECs should be required to provide DSL transport to ISPs pursuant to tariff. DSL transport is not at issue in Covad's arbitration here, and was not part of the *Triennial Review* proceeding discussed in the footnote cited by BellSouth. Thus, the *Wireline Broadband Order* and the earlier *Triennial Review Order* ("*TRO*") cannot be construed to boost the proposition BellSouth is trying to support here.

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<sup>1</sup> The complete text of the Order is available at:  
[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-05-150A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-150A1.doc)

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Indeed, the footnote cited by BellSouth is not only irrelevant here, it is completely unremarkable to begin with. Footnote 157 merely recites what the FCC did two years ago in the *TRO* when it affirmed that CLECs have the right to use stand-alone copper loops to provide broadband services. In the *TRO*, the FCC declined to readopt linesharing rules under § 251. As this Commission already knows, Covad filed its arbitration petition long after the *TRO* and is not claiming a right to linesharing under that part of the Act.

That the *Wireline Broadband Order* does not discuss linesharing to any significant degree is similarly unremarkable. The *Wireline Broadband Order* relates to the obligations of incumbents generally, and like the *TRO*, has nothing to do with the unique obligations of BellSouth and other BOCs under § 271. The order is irrelevant to the linesharing question currently before the Florida Commission.

For the Commission's convenience, here is the complete text of the footnote cited by BellSouth:

157 The Commission's *Triennial Review Order* expressly reaffirmed the competitive LECs' right to obtain unbundled access to stand-alone copper loops in order to provide broadband transmission services. *See Triennial Review Order*, 18 FCC Rcd at 17128-32, paras. 248-54. In addition, we reaffirmed the incumbent LECs' obligation to provide competitive LECs with the ability to line split (*i.e.*, where one competitive LEC provides narrowband voice service over the same loop that a second competitive LEC uses to provide DSL service). *Id.* at 17130-31, paras. 251-52. In that order, the Commission also grandfathered existing line sharing customers and declined to reinstate the Commission's vacated line sharing rules. The Commission instead established a three-year transition after which any new customer must be served through a line splitting arrangement, through use of the stand-alone copper loop, or through an arrangement that a competitive LEC has negotiated with the incumbent LEC to replace line sharing. Line sharing allowed a competing carrier to provide DSL service over the high-frequency portion of the same loop that the incumbent LEC uses to provide voice service. *Id.* at 17132-41, paras. 255-69. The D.C. Circuit expressly upheld the Commission's decision not to require line sharing. *USTA II*, 359 F.3d at 585. As we discuss in

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part VI.D, below, the decisions contained in this Order have no affect on competitive LECs' ability to obtain UNEs, or on the section 251(c) obligations of incumbent LECs.

Sincerely yours,

s/Vicki Gordon Kaufman  
Vicki Gordon Kaufman

VGK/pg

cc: Parties of Record