

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by DIECA
Communications, Inc. d/b/a Covad
Communications Company for
arbitration of unresolved issues
in interconnection agreement
with BellSouth Telecommuni-
cations, Inc.

DOCKET NO. 001797-TP
ORDER NO. PSC-01-1358-PHO-TP
ISSUED: June 21, 2001

Pursuant to Notice and in accordance with Rule 28-106.209,
Florida Administrative Code, a Prehearing Conference was held on
June 11, 2001, in Tallahassee, Florida, before Commissioner Lila A.
Jaber, as Prehearing Officer.

APPEARANCES:

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On behalf of BellSouth Telecommunications, Inc.

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On behalf of the Commission Staff.

DOCUMENT NUMBER-DATE

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FPSC RECORDS/REPORTING

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

On December 15, 2000, DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) petitioned for arbitration with BellSouth Telecommunications, Inc. (BellSouth) in accordance with Section 252. On January 9, 2001, BellSouth filed its Response to Covad's petition for arbitration. This matter is currently set for an administrative hearing.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues no later than nine months after the date on which the local exchange carrier received the request under this section.

The parties have, however, agreed to waive this nine-month time frame.

In addition, Section 252(b)(4)(A) provides that this Commission shall limit its consideration of any petition to the issues set forth in the petition and in the response, if any. The hearing will be conducted according to the provisions of Chapter 120, Florida Statutes, and all administrative rules applicable to this Commission.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to

present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Jason D. Oxman *(will adopt direct testimony of Mr. Koutsky)	Covad	1, 2, 3, 31, 32(a)
Thomas E. Allen	Covad	5(a), 5(b), 5(c), 6, 7(a), 7(b), 8, 11, 12, 13, 21, 22, 29 and 30
William Seeger	Covad	5(a), 5(b), 5(c), 8, 25 and 30
Joseph P. Riolo	Covad	29
Elizabeth R.Y. Kientzle/Joseph P. Riolo	Covad	16, 18, 23 and 24
Cynthia K. Cox	BellSouth	1, 2, 3, 6, 8, 11(a), 11(b), 12, 24 and 25
Jerry Kephart	BellSouth	7(a), 7(b) and 30
Bernard Shell	BellSouth	24 and 29
Jerry Wilson *(will adopt the direct testimony of Ronald M. Pate)	BellSouth	21
Tommy Williams	BellSouth	16, 18, 21, 22 and 23
Jerry Latham	BellSouth	5(a), 5(b) and 5(c)

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Rebuttal</u>		
Jason D. Oxman	Covad	1, 2, and 3
Thomas E. Allen	Covad	5(a), 5(b), 5(c), 6, 7(a), 7(b), 8, 11, 12, 13, 21, 22 and 30
William Seeger	Covad	5(a), 5(b), 5(c), 7(a), 23 and 30
Joseph P. Riolo	Covad	29
Elizabeth R.Y. Kientzle/Joseph P. Riolo	Covad	16, 18, 23 and 24
Cynthia K. Cox	BellSouth	1, 2, 3, 6, 8, 11(a), 11(b), 12, 24 and 25
Jerry Kephart	BellSouth	7(a), 7(b) and 30
Bernard Shell	BellSouth	24 and 29
Clyde Greene	BellSouth	31 and 32(a)
Jerry Wilson	BellSouth	21
Tommy Williams	BellSouth	16, 18, 21, 22 and 23
Jerry Latham	BellSouth	5(a), 5(b) and 5(c)

* Direct and Rebuttal testimony will be taken up together.

VII. BASIC POSITIONS

COVAD:

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

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

BELLSOUTH:

The Commission's goal in this proceeding is to resolve each issue in this arbitration consistent with the requirements of Section 251 of the Telecommunications Act of 1996 ("1996 Act"), including the regulations prescribed by the Federal Communications Commission ("FCC"). BellSouth and Covad have continued to negotiate in good faith, and have resolved a significant number of issues since Covad's request for arbitration was filed with this Commission.

Nevertheless, there remain a number of issues for which the parties have not been able to reach a solution. These issues range in scope from questions about the intervals for provisioning xDSL loops to the time period within which Covad should pay BellSouth for the wholesale services Covad obtains under the parties' agreement. BellSouth believes that Covad's positions on these issues will not withstand close scrutiny. For the most part, these issues involve Covad's desire to receive preferential treatment. BellSouth believes that its positions are both reasonable and fair. The Commission should adopt BellSouth's position on these issues.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

[LEGAL ISSUE]

ISSUE A: What is the Commission's jurisdiction in this matter?

POSITIONS

COVAD:

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

BELLSOUTH:

BellSouth has adopted the Commission Staff's position on this issue.¹

STAFF:

Section 252 of the Federal Telecommunications Act of 1996 (Act) sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b)(4)(C) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section. In this case, however, the parties have explicitly waived the 9-month requirement set forth in the Act. Furthermore, this Commission has jurisdiction pursuant to Chapter 364, Florida Statutes, and Section 252 of the Federal Telecommunication Act of 1996 (Act) to arbitrate interconnection agreements, and may implement the processes

¹ On June 11, 2001, BellSouth requested that it be allowed to adopt the Commission Staff's position on this issue. Due to an unintentional oversight, BellSouth had not included a position on this issue in its prehearing statement. Accordingly, BellSouth's request was granted by the Prehearing Officer.

and procedures necessary to do so in accordance with Section 120.80(13)(d), Florida Statutes. However, pursuant to Section 252(e)(5) of the Act, if a state commission refuses to act, then the FCC shall issue an order preempting the Commission's jurisdiction in the matter, and shall assume jurisdiction of the proceeding.

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

POSITIONS

COVAD:

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

BELLSOUTH:

This issue is beyond the scope of Section 251 of the 1996 Act. Therefore, the Commission should not impose the adoption of disputed language relating to this issue. If, however, the Commission addresses the merits of the disputed language, each party's liability to the other arising out of any negligent act or omission should be limited to a credit for the actual cost of the services or functions not performed or improperly performed. BellSouth is willing to exclude from this limitation losses resulting from gross negligence or intentional misconduct.

STAFF:

Staff has no position at this time.

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

POSITIONS

COVAD:

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

BELLSOUTH:

This issue is beyond the scope of Section 251 of the 1996 Act. Therefore, the Commission should not impose the adoption of disputed language relating to this issue. If, however, the Commission addresses the merits of the disputed language, Covad's proposed language should be rejected. Because of the schedule for the implementation of the new interconnection agreement and the schedule for BellSouth's negotiations with its unionized workforce, this issue is moot. Moreover, BellSouth will provide interconnection and access to unbundled network elements on a nondiscriminatory basis during any work stoppage. BellSouth does not have enough resources to consult with every ALEC before, during, and after a strike. Covad is not entitled to preferential treatment in this regard.

STAFF:

Staff has no position at this time.

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

POSITIONS

COVAD:

No. Such a restriction would violate FCC rule 51.809 which requires BellSouth to make available any interconnection agreement to which it is a party, which has been approved by

a state commission upon the same rates, terms and conditions in the agreement. The rule imposes no minimum time frame on the remaining duration of the agreement, nor does it require adoption of all "legitimately related" clauses. This standard is vague and subject to unnecessary dispute.

BELLSOUTH:

Consistent with FCC Rule 51.809, an ALEC should not be allowed to opt into an existing interconnection agreement that has less than 6 months to run before it expires. Moreover, pursuant to Section 252(i) of the Act and FCC Rule 51.809, BellSouth is required to make available to ALECs any interconnection, service, or network element provided under any other agreement at the same rates, terms and conditions as provided in that agreement. This is commonly known as the "most favored nation" or "pick and choose" option. The ALEC, however, must also adopt any rates, terms and conditions that are legitimately related to, or were negotiated in exchange for or in conjunction with, the portion of the agreement being adopted. The adoption or substitution by an ALEC of specific terms contained in a previously approved agreement should be effective on the date the amendment memorializing the adoption is signed by BellSouth and the adopting ALEC.

STAFF:

Staff has no position at this time.

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

The parties have reached an agreement on this issue.

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

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

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

POSITIONS

COVAD:

- (a) These loops should be provisioned within 3 business days.
- (b) These loops should be provisioned within 5 business days.
- (c) Deconditioning work should be done in 5 business days.

BELLSOUTH:

- (a) BellSouth will provide these facilities within 5-7 working days after an error-free local service request has been received and a Firm Order Confirmation (FOC) has been returned to Covad. Covad's proposed intervals should be rejected because Covad is not entitled, under the 1996 Act or the rules and regulations of the FCC, to have these network elements provisioned more rapidly than BellSouth makes these facilities available to itself or its affiliates.
- (b) BellSouth's interval for IDSL-Compatible loops, as for the loops addressed in Issue 5(a), is 5 to 7 days after the FOC is returned to Covad. The BellSouth proposal to provision these loops according to its standard "service intervals" is appropriate. Covad's proposed interval is unreasonable.
- (c) BellSouth has proposed to Covad a sliding scale of relevant time frames based on the way the loops are provisioned. The xDSL compatible loops that Covad wishes to purchase from BellSouth must have certain technical characteristics in order to work properly. Typically, the loops must have load coils and/or bridged tap removed before they are provisioned. Covad's proposed five-day interval for this work is clearly unreasonable. BellSouth's position is reasonable and nondiscriminatory.

STAFF:

Staff has no position at this time on issues 5(a), (b) and (c).

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?

POSITIONS

COVAD:

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

BELLSOUTH:

Covad's proposal is unreasonable. Covad is asking that BellSouth financially guarantee that an order will be provisioned on the original due date given. To do what Covad requests would result in additional work effort and, therefore, additional costs being incurred in the ordering phase, prior to the FOC being returned to Covad. If Covad wants financial guarantees that the due date will not be missed, then the rates Covad pays for the services it wants will have to be adjusted to reflect BellSouth's assumption of those risks.

STAFF:

Staff has no position at this time.

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

POSITIONS

COVAD:

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

BELLSOUTH:

Joint Acceptance Testing is not appropriate for this type of loop unless Covad desires it as a separate chargeable option. BellSouth has developed a non-designed loop for xDSL services with a lower non-recurring cost achieved

partially via reduced testing requirements. Covad may choose to purchase various types of designed loops with more rigorous requirements should they desire joint testing activities. BellSouth will provision non-designed loops in accordance with its specifications in TR73600.

To insure that BellSouth can adapt its loop offerings to newly developed standards and changes in technology, BellSouth needs to retain the flexibility to alter its loop definitions and specifications. ALECs are always notified in advance of these changes through Carrier Notification letters.

STAFF: Staff has no position at this time on issues 7(a) and (b).

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?

POSITIONS

COVAD:

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

BELLSOUTH:

When Covad causes BellSouth to dispatch a technician to test a loop that Covad has reported as having a problem, and no

problem is found on BellSouth's facilities, Covad should pay BellSouth's expenses incurred as a result of the unnecessary dispatch. If Covad disputes the billing of a dispatch in a particular circumstance, other provisions in the parties' agreement provide a process for doing so. Under the very narrow circumstances described in the statement of this issue, Covad would not be charged for the dispatch.

STAFF:

Staff has no position at this time.

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

The parties have reached an agreement on this issue.

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

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

POSITIONS

The parties have reached an agreement on this issue.

COVAD:

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

(b) This issue will be resolved in Docket No. 990649-TP.

BELLSOUTH:

(a) The parties agree that this issue was decided in Docket No. 990649-TP.

- (b) The parties agree that this issue was decided in Docket No. 990649-TP.

STAFF:

Staff has no position at this time on issues 10(a) and (b).

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?

POSITIONS

COVAD:

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

BELLSOUTH:

- (a) Manual ordering charges should apply when Covad places an order manually, either for its own business reasons or because BellSouth does not have an electronic interface that will allow Covad to place orders electronically. The rate for manual service orders, Cost Element Number N.1.2, adopted by this Commission in Docket No. 990649-TP, is the appropriate rate.
- (b) Manual ordering charges should apply when Covad places an order manually, either for its own business reasons or because BellSouth does not have an electronic interface that will allow Covad to place orders electronically. The rate for manual service orders, Cost Element Number

N.1.2, adopted by this Commission in Docket No. 990649-TP, is the appropriate rate.

STAFF:

Staff has no position at this time on issue 11 (a) and (b).

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?

POSITIONS

COVAD:

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

BELLSOUTH:

Once Covad submits an LSR, BellSouth begins processing Covad's order. Even if Covad later withdraws its request, Covad is responsible for paying whatever charges are appropriate to reimburse BellSouth for the work done on Covad's behalf.

STAFF:

Staff has no position at this time.

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

The parties have reached an agreement on this issue.

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

POSITIONS

The parties have reached an agreement on this issue.

COVAD:

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

BELLSOUTH:

This issue has been settled.

STAFF:

Staff has no position at this time.

ISSUE 15: What should be the interval for installation in central offices of splitters necessary to implement line sharing?

The parties have reached an agreement on this issue.

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

POSITIONS

COVAD:

Splitters should be placed either on the MDF or within a minimal distance (e.g., 25 feet) of the distribution frame. This will result in efficient provisioning and mitigate placement costs.

BELLSOUTH:

Splitters should be located in the common areas where the ALECs are collocated. Covad is not entitled to dictate where splitters are located in BellSouth's central offices. Moreover, locating the splitters on the MDF as proposed by

Covad is very inefficient due to the frame space that this approach requires.

STAFF:

Staff has no position at this time.

ISSUE 17: Should Covad be permitted to purchase splitter space in increments of one port at a time?

The parties have reached an agreement on this issue.

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

POSITIONS

COVAD:

It should take no more than 24 hours to provision a loop that does not require deconditioning because the only physical work required is wiring the splitter configuration into the existing service. To provide BellSouth with time to achieve this interval, Covad proposes a "step-down" process to drive the interval to 24 hours within 2 months of the Order in this docket. BellSouth should provision loops first within 3 days (from Day 1 to Day 30 after the Order is issued), then within 2 days (from Day 31 to Day 60) and, then within 24 hours beginning on Day 61.

BELLSOUTH:

BellSouth owes Covad nondiscriminatory access to its unbundled network elements. BellSouth is not obligated to create special provisioning intervals for Covad. The current provisioning intervals for Covad and the other ALECs in Florida are comparable to the provisioning for BellSouth's own ADSL service, which is all that can be required of BellSouth.

STAFF:

Staff has no position at this time.

ISSUE 19: Deleted. Issue 19 has become Issue 11(b).

ISSUE 20: Should BellSouth be required to certify the functionality of the splitters that it has in place as well as the splitters that it places in service in the future?

The parties have reached an agreement on this issue.

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

COVAD:

Yes. Provisioning a line shared loop requires only a simple cross connect in the central office. Covad must have accurate information that the cross connect has been performed in order to provision the loop. BellSouth refuses to do so, but instead refers Covad to inaccurate reports on BellSouth's website. BellSouth should be required to update its web report daily (not three times per week as it currently does) and should provide Covad with a daily list of completed line share orders.

BELLSOUTH:

BellSouth agrees that it must provide accurate information to the ALECs when line sharing orders have been completed. ALECs may rely on the electronic completion notice ("CN") for orders submitted electronically and may use the CLEC Service Order Tracking System ("CSOTS") to obtain CN status for manually submitted requests. This is the same CN process used for all other UNE requests. ALEC use of a "line sharing COSMOS/SWITCH" report, as an interim method to determine CN status, is no longer required.

STAFF:

Staff has no position at this time.

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

POSITIONS

COVAD:

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

BELLSOUTH:

BellSouth is willing to test continuity of the data circuit wiring. BellSouth also tests the wiring of the high frequency spectrum. In January 2001, BellSouth announced to the line sharing collaborative that it would begin using the new Line Sharing Verification Transmitter (LSVT) to test the wiring of the loops for line sharing. The device is now being deployed and use of this device has been included in procedures for installation and maintenance of line sharing loops.

STAFF:

Staff has no position at this time.

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

POSITIONS

COVAD:

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

BELLSOUTH:

BellSouth is responsible for the quality of wiring at its frame. There is a process for ALECs to report troubles on UNE services and for BellSouth to respond to and repair the troubles. It would not be appropriate to allow individuals not employed by BellSouth to perform work at the frame because of the potential cost and service disruption that errors by ALEC technicians might cause.

STAFF:

Staff has no position at this time.

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

POSITIONS

COVAD:

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

BELLSOUTH:

The parties agree that this issue, except as it relates to rates for line sharing, was decided in Docket No. 990649-TP. The rates that Covad should pay for line sharing must be derived in accordance with the TELRIC costing principles adopted by the FCC and by this Commission. Rates for line

sharing, based on TELRIC principles, are set forth in Exhibit CKC-D1. The Commission should adopt these rates in this docket with the understanding that any final adjustments ordered in Docket No. 990649-TP, if applicable, can be incorporated at a later date. These rates should be trued-up only on a going forward basis.

STAFF:

Staff has no position at this time.

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?

POSITIONS

COVAD:

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

BELLSOUTH:

Covad is not entitled to learn which ALECs are on the waiting list for a particular central office. And, BellSouth has no obligation to contact ALECs on a waiting list on Covad's behalf and attempt to broker a transaction to minimize Covad's expenses associated with vacating a central office. Moreover, if the Commission were to order BellSouth to take such action on Covad's behalf, BellSouth requests that the Commission find that any time spent in the negotiating process between the ALECs not be counted as part of BellSouth's provisioning time

when determining whether BellSouth has met its collocation provisioning intervals.

STAFF:

Staff has no position at this time.

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

The parties have reached an agreement on this issue.

ISSUE 27: When should charges for collocated space begin?

The parties have reached an agreement on this issue.

ISSUE 28: Should BellSouth be required to provide power cabling from the BDFB to Covad's collocation space?

The parties have reached an agreement on this issue.

ISSUE 29: What rates should Covad pay for collocation?

POSITIONS

COVAD:

The rates BellSouth has proposed for collocation are too high. It has used erroneous task times and/or unsupportable assumptions. The Commission should reduce the elements specifically discussed in Mr. Riolo's rebuttal testimony and apply a reasonable percentage decrease to the remaining proposed rates, subject to true-up, after completion of the generic collocation docket.

BELLSOUTH:

The rates that Covad should pay for collocation must be derived in accordance with the TELRIC costing principles adopted by the FCC and by this Commission. Rates for collocation, based on TELRIC principles, are set forth in Exhibit CKC-D1. The Commission should adopt these rates in this docket with the understanding that any final adjustments ordered in Docket No. 990649-TP, if applicable, (and eventually Docket Nos. 981834-TP/990321-TP for collocation) can be incorporated at a later date. These rates should be trued-up only on a going forward basis.

STAFF:

Staff has no position at this time.

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

POSITIONS

COVAD:

Yes. The loop installation process must be predictable and uniform. A time frame must be contractually provided for resolution of facility issues, so that Covad's orders do not fall into a black hole of "pending facilities."

BELLSOUTH:

It is not reasonable to place an arbitrary, artificial time limit on when facilities issues can be resolved. Availability of facilities is affected by Outside Plant Construction workload and other factors. Facility problems for ALEC service requests are handled by BellSouth using the same procedures that BellSouth uses to handle its own facility problems.

STAFF:

Staff has no position at this time.

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

POSITIONS

COVAD:

BellSouth should send bills in both paper and electronic form and Covad should have 30 days to process the bills when received. Covad has proposed that BellSouth send the bills in both formats within 10 business days from the bill date. But if both bills are not sent within that time, the payment should be due within 30 days of receipt of the later bill, giving Covad 30 days to process a bill. BellSouth wants to tie the payment to the "bill date" not the receipt date and this could result in Covad having less than thirty days to pay and process a bill. Covad needs sufficient time to review the bills prior to payment.

BELLSOUTH:

BellSouth currently sends Covad a paper bill and a magnetic tape of its bill. The bill will be due 30 days from the bill date. The paper bill and magnetic tape are generally rendered within 10 days of that bill date. If Covad believes that it has insufficient time to review its bill, Covad could choose to receive its bill electronically at an additional charge.

STAFF:

Staff has no position at this time.

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

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

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

POSITIONS

COVAD:

- (a) No. Covad should not have to pay the amount of the overcharge while the dispute is resolved. Late payments should not be assessed on amounts withheld because of a dispute. Late fees should be assessed only if Covad has incorrectly withheld an amount.

BELLSOUTH:

- (a) Covad should not have to pay portions of bills that it legitimately disputes until the dispute is resolved. Covad should, however, pay any undisputed amounts. Moreover, once the dispute is resolved, Covad should clearly pay late charges on the portion of the disputed bill that it is finally determined that Covad owes.

STAFF:

Staff has no position at this time.

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

The parties have reached an agreement on this issue.

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

The parties have reached an agreement on this issue.

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

The parties have reached an agreement on this issue.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Jason D. Oxman	Covad	JDO-1	Excerpts from Interconnection Agreements
Thomas E. Allen	Covad	TEA-1	BellSouth Plans for DSL Service
		TEA-2	BellSouth discovery response
		TEA-3	Excerpt from Covad Interconnection Agreement with SWBT
Elizabeth R.Y. Kientzle/Joseph P. Riolo	Covad	ERYK/JPR-1	Resume of Elizabeth R.Y. Kientzle
		ERYK/JPR-2	Resume of Joseph P. Riolo
		ERYK/JPR-3	Proposed Prices for Line sharing Over Home-Run Cooper
		ERYK/JPR-4	Splitter and NRC Cost Development
		ERYK/JPR-5	Comparison of Proposed Prices for Line Sharing

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Elizabeth R.Y. Kientzle/Joseph P. Riolo	Covad	ERYK/JPR-6	Excerpts from BellSouth Discovery Responses
Cynthia K. Cox	BellSouth	CKC-D1	BellSouth Cost Calculator 2.4 - Element Summary Report
		CKC-R1	General Subscriber Service Tariff, Sec. A2.4, Pages 18 through 20 Access Service Tariff, Sec. E2.4, Pages 19 through 22
Bernard Shell	BellSouth	WBS-1	PROPRIETARY - UNE Cost Study
		WBS-2	Diagram Line Sharing in the C.O. (CLEC Owned Splitter)
		WBS-3	PROPRIETARY - Spreadsheet
Clyde Greene	BellSouth	CLG-R1	Sample Federal Express Delivery Confirmation Forms for Covad Magnetic Tape Bills
		CLG-R2	Pages 1 and 481 of May 10, 2001 Bill from an ALEC to BellSouth

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Clyde Greene	BellSouth	CLG-R3	Pages 1 and 352 of May 13, 2001 Bill from BellSouth to an Interexchange Carrier Customer

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

The parties indicate that they have reached agreement on Issues 4, 9, 10(a) and (b), 13, 14, 15, 17, 20, 26, 27, 28, 32(b), 33, 34, and 35. Furthermore, BellSouth indicates there may be partial agreement on Issue 24. However, Covad's prehearing statement reflects that this issue is still contested between the parties.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

BellSouth's May 14, 2001, Request for Confidential Treatment of Document No. 06013-01; and BellSouth's May 21, 2001, Request for Confidential Treatment of Document No. 06410-01. BellSouth has also indicated its intent to file a Request for Confidential Treatment by June 13, 2001, of information attached to the rebuttal testimonies of Covad witnesses Kientzle and Riolo, Document Nos. 06506-01 and 06507-01. A separate order will be issued on the pending confidentiality requests prior to hearing.

XIII. RULINGS

Opening statements, if any, shall not exceed ten minutes per party.

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Based on the foregoing, it is

ORDERED by Commissioner Lila A. Jaber, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 21st Day of June, 2001.



LILA A. JABER
Commissioner and Prehearing Officer

(S E A L)

FRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1)

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reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.