



SCANNED ORIGINAL

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Friday, March 26, 1999

VIA Federal Express

Ms Blanca Bayo, Director
Divisions of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

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ADMINISTRATION
MAIL ROOM

RE: Docket No. 990182-TP
Covad Petition for Arbitration of Interconnection Agreement with GTE

Dear Ms Bayo:

Enclosed for filing are an original and fifteen copies of Covad Communications Company's prehearing statement relating to its Petition for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with GTE.

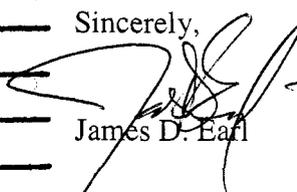
Service has been made as indicated on the Certificate of Service.

ACK _____ Please do not hesitate to contact me if you have any questions concerning this matter.

AFA _____
APP _____ Thank you for your assistance.

CAF _____ Sincerely,

CMU _____
CTR _____
EAG _____
LEG _____
LIN _____
OPC _____
RCH _____
SEC _____
WAS _____
OTH _____

 
James D. Earl and Thomas Koutsky
Assistant General Counsel

Enclosures

cc: Attached Service List

DOCUMENT NUMBER-DATE

~~02974~~ MAR 29 99

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of DIECA Communications)
Inc. d/b/a Covad Communications)
Company for Arbitration of)
Interconnection Rates, Terms,) Docket No. 990182-TP
Conditions and Related)
Arrangements with GTE Florida)
Incorporated)

COVAD PREHEARING STATEMENT

A. The name of all known witnesses that may be called by Covad, and the subject matter of their testimony.

1. James D. Earl, Covad Assistant General Counsel, is expected to offer background testimony on each open issue in the arbitration.
2. Terry Murray, president of the consulting firm Murray & Cratty may offer testimony relating to UNE pricing, cost models and studies and their non-compliance with FCC pricing rules. (see section I. below)
3. Chuck Haas, Covad Vice President of Sales and Business Development is expected to offer testimony relating to the commercial and competitive impact of prices of essential elements (such as loops, NIDs and transport) on the provision of DSL services.

B. A description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each.

1. The FCC pricing rules (47 C.F.R. §§51.501 - 51.515), identified on a composite basis, sponsored by James D. Earl if not noticed by the Commission.
2. Decisions of State Commissions (including Public Florida Public Service Commission Order No. PSC-97-0064-FOF-TP, the GTE/AT&T Arbitration Order) that relate to the GTE COSTMOD and SCIS models, individually identified, sponsored by James D. Earl and/or Terry Murray if not noticed by the Commission.
3. GTE's federal tariff for ADSL service, individually identified, sponsored by James D. Earl and/or Terry Murray if not noticed by the Commission.

4. Current proposed texts of open issues, identified on an individual basis, sponsored by James D. Earl unless stipulated to.
5. Provisions of 47 U.S.C. 255(k), identified on an individual basis by James D. Earl if not noticed by the Commission.
6. Print out copies of GTE web site offers of DSL service, identified on an individual basis by James D. Earl.

C. A statement of basic position in the proceeding.

Covad seeks an interconnection agreement that will render it commercially and competitively viable in Florida. To that end, it seeks assistance, through arbitration, to counterbalance the disparity in bargaining power with GTE. Of particular concern is Covad's ability to obtain elements at rates, terms and conditions that are just, reasonable and non-discriminatory and in full compliance with federal pricing rules.

D. A statement of each question of fact the party considers at issue, the party's position on each such issue, and which or the party's witnesses will address the issue.

1. Covad considers the facts surrounding the lack of negotiations between the issuance of the Supreme Court decision in *AT&T Corp. v. Iowa Util. Bd.* on January 25, 1999 and the filing of its arbitration petition before closure of the calculated arbitration window on February 16, 1999 to be in dispute. However, while hardly trivial, this issue is not one that Covad seeks to address as of the filing of this prehearing statement in light of the negotiations that have taken place during the pendency of this arbitration. (See section I. below)
2. Does the GTE offer of loops, NIDs and transport to Covad comply with the federal pricing rules (47 C.F.R. §§51.501 - 51.515)? Covad believes that it does not. Chuck Haas, Terry Murray, and/or James D. Earl will address the issue.
3. The foregoing issue 2 contains the embedded issue: Was the Florida state process underlying the GTE offer of loops, and transport to Covad in compliance with the federal pricing rules? Covad believes that it was not. Terry Murray, and/or James D. Earl will address the issue

E. A statement of each question of law the party considers at issue and the party's position on each such issue.

- 1.. Does the Florida Public Service Commission have the discretion to substantively address some, but not all, of the open issues identified by

- Covad in its arbitration petition? Covad believes it does not for the reasons identified in its letter dated March 16, 1999.
2. What was the legal standard applied by the Florida Public Service Commission in the proceeding that generated the prices of loops, NIDs and transport now on offer to Covad? Covad believes the legal standard was not based on, nor in compliance with, the federal pricing rules.
 3. Does the decision of the Supreme Court in *AT&T Corp. v. Iowa Util. Bd.*, Nos. 97-826 *et al.*, ___ U.S. ___ (Jan. 25, 1999) compel the Florida Public Service Commission to apply a different legal standard in this arbitration? Covad believes that the Florida Public Service Commission is compelled to apply the federal pricing rules to the rates, terms, and conditions for GTE's provision of loops, NIDs, and transport to Covad in this arbitration.
 4. What is the scope of discretion available to the Florida Public Service Commission with regard to the pricing of loops, NIDs and transport in this arbitration if the GTE offer does not comply with the federal pricing rules? Covad believes that the Commission has no discretion other than to apply the proxies for forward-looking economic cost (51 C.F.R. §51.513) absent a state proceeding conducted in conformity with the federal pricing rules within the arbitration period.

F. A statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address each issue.

1. Will the application of the proxies for forward-looking economic cost in this arbitration provide GTE with incentive to participate in a speedy, focused state proceeding conducted in conformity with the federal pricing rules? Covad believes that GTE will have such an incentive and that such incentive will inure to the public benefit of the citizens of Florida. Chuck Haas, Terry Murray and/or James D. Earl will address the issue.
2. Should Covad be compelled by GTE's superior bargaining power (stemming from GTE's complete control of inputs essential to Covad's provision of DSL services within GTE's area of operations) to surrender its right to litigate disputes arising out of its interconnection agreement? Covad believes that the option of litigation is a key to GTE's full and timely compliance with provisions of the interconnection agreement. James D. Earl will address the issue.
3. Should Covad be compelled by GTE's superior bargaining power (stemming from GTE's complete control of inputs essential to Covad's provision of DSL services within GTE's area of operations) to accept (1) limits on GTE liability in cases of GTE's willful misconduct or gross negligence, and (2) severe limits on direct damages recovery in other cases where damage is caused by GTE? Covad believes that the liability of neither party should be limited in cases of willful misconduct or gross negligence by the other. Covad believes that, in other cases, liability should be limited to direct damages with no further limitation. (The

limitation on direct damages in retail tariffs is wholly inapplicable to the commercial transaction whereby valuable equipment is collocated to provide service in competition with the hosting company.) James D. Earl will address the issue.

4. Should Covad be compelled by GTE's superior bargaining power (stemming from GTE's complete control of inputs essential to Covad's provision of DSL services within GTE's area of operations) to accept prices, terms and conditions for loops, NIDS and transport that do not comply with federal pricing rules? Covad believes it should not be so compelled. Further, Covad believes that the public interests of Florida citizens will be best served when GTE's offer of network elements complies with federal pricing rules. Chuck Haas, Terry Murray, and/or James D. Earl will address the issue.
5. Should Covad be compelled by GTE's superior bargaining power (stemming from GTE's complete control of inputs essential to Covad's provision of DSL services within GTE's area of operations) to accept collocation prices, terms, and conditions controlled by applicable tariffs without a commensurate GTE obligation to bring such tariffs into compliance with state and federal regulations within 30 days of their effective date (or as otherwise ordered by the relevant regulatory body)? Covad believes that, if tariffs are to control prices, terms and conditions, than GTE should commit to conform those tariffs to applicable state and federal requirements within an appropriate time period. Change of law provisions relating to the interconnection agreement do not apply to separate, independent tariffs. James D. Earl will address the issue.
6. Should Covad be compelled by GTE's superior bargaining power (stemming from GTE's complete control of inputs essential to Covad's provision of DSL services within GTE's area of operations) to accept prices of Unbundled Network Elements controlled by applicable tariffs (notwithstanding the fact that GTE may not currently have applicable state tariffs on file in Florida) without a commensurate GTE obligation to bring such tariffs into compliance with state and federal regulations within 30 days of their effective date (or as otherwise ordered by the relevant regulatory body)? Covad believes that, if tariffs are to control prices, terms and conditions of Unbundled Network Elements, than GTE should commit to conform those tariffs to applicable state and federal requirements within an appropriate time period. Change of law provisions relating to the interconnection agreement do not apply to separate, independent tariffs. James D. Earl will address the issue.

G. A statement of issues that have been stipulated to by the parties

No issues have been stipulated to by the parties as of the filing of this prehearing statement. Covad may propose, and will entertain, reasonable stipulations to aid the orderly process of this arbitration.

H. A statement of all pending motions or other matters the party seeks action upon

Covad has no pending motions and seeks action on no other matters as of the filing of this prehearing statement.

I. A statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

1. Covad requested cost studies that relate to the prices on offer by GTE on March 17, 1999. Covad received the information on March 26, 1999. Until Covad has examined those studies, it cannot definitively identify all issues related to the conformity of GTE prices, terms and conditions to the federal pricing rules. Accordingly Covad requests leave to identify additional issues related to the cost studies and the resulting GTE offer, and to identify additional witnesses.
2. While Covad does not address issues involving the lack of negotiations between the issuance of the Supreme Court decision in *Iowa* and the filing of its arbitration petition, Covad requests leave to do so should comparable conduct occur during the pendency of this arbitration.
3. Covad identified several issues in its arbitration petition as "miscellaneous resolved but outstanding issues". One such issue, service standards, continues to remain outstanding. Should it remain unresolved, Covad requests leave to include it as an open issue for arbitration.
4. Covad reserved the right to modify its arbitration petition to add additional issues that might arise prior to the conclusion of this arbitration. One such issue, involving a presumption of Covad liability for GTE costs not agreed within the interconnection agreement. Negotiations continue. While there does not appear to be a substantive disagreement, Covad requests leave to include it as an open issue for arbitration.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing prefiled testimony regarding Covad's Petition of Interconnection Rates, Terms, Conditions and related Arrangements with GTE was sent via overnight Federal Express delivery on this 26th day of March, 1999 to the following:

Sam Jones
Manager – Compensation Planning
GTE Network Services
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Irving, TX 75038

Kimberly Caswell
GTE Service Corporation
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Tampa, FL 33601-0110

Beth Keating
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850



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