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September 13, 2000

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SEP 13 PM 4:37
RECORDS AND REPORTING

Ms. Blanca S. Bayó
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: UNE Docket No. 990649-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of BlueStar Networks, Inc.,
DIECA Communications, Inc. d/b/a Covad Communications Company and
Rhythms Links Inc. is their Joint Response to BellSouth's
Emergency Motion to Compel.

By copy of this letter, these documents have been furnished
to the parties on the attached service list.

Very truly yours,

Richard D. Melson

RDM/kcg

Enclosures

cc: Parties of Record

- APP _____
- CAF _____
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into pricing of)
unbundled network elements)
_____)

Docket No. 990649-TP

Filed: September 13, 2000

**JOINT RESPONSE OF BLUESTAR, COVAD AND RHYTHMS
TO BELL SOUTH'S EMERGENCY MOTION TO COMPEL**

BlueStar Networks, Inc. ("BlueStar"), DIECA Communications, Inc. d/b/a/ Covad Communications Company ("Covad") and Rhythms Links Inc. ("Rhythms") (collectively, the "Data ALECs") hereby respond in opposition to BellSouth's Emergency Motion to Compel ("Motion") filed on September 11, 2000. BellSouth's Motion seeks to compel the Data ALECs to respond to Interrogatory Nos. 46 and 48 of BellSouth's Second Set of Interrogatories and Request No. 13 of BellSouth's Second Request for Production of Documents. As grounds for their opposition, the Data ALECs state:

INTERROGATORY NOS. 46 AND 48

1. Notwithstanding their objection that Interrogatory Nos. 46 and 48 improperly call for a legal conclusion or opinion, the Data ALECs have today filed a response to these Interrogatories. The Motion to Compel as to these interrogatories is therefore moot.

REQUEST FOR PRODUCTION NO. 13

2. BellSouth's Request for Production No. 13 calls for the Data ALECs to:

Produce all documents referring or relating to multiple loop conditioning practices of any incumbent local exchange carrier.

The Data ALEC's objected to this request to the extent that it calls for documents which are in their possession subject to confidentiality agreements with the owners of the information (i.e., other incumbent LECs). The Data ALECs have today produced certain non-confidential documents which are responsive to this request; however, they are not free to produce other documents which they hold subject to confidentiality agreements with third parties.

3. The fact that the Data ALECs have an agreement with BellSouth regarding discovery in this docket under which the parties agree to hold certain discovery responses confidential does nothing to relieve the Data ALECs of their obligation not to disclose information that they have received in proceedings in other states and which they have agreed with the owners of the information not to disclose. For example, BellSouth would legitimately complain if confidential information that the Data ALECs obtained from BellSouth in this docket were disclosed to other ILECs in proceedings in other states -- the confidentiality agreement flatly prohibits disclosure to any person who is not a signatory to the agreement. The confidentiality agreements entered to with ILECs in other states likewise would be violated if the Data ALECs provided those ILECs' confidential documents or information to BellSouth.

4. The fact that BellSouth may have obtained permission from certain of its vendors to produce their confidential information subject to the confidentiality agreement in this docket in no way requires the Data ALECs to breach their confidentiality agreements with other ILECs by disclosing third-party information that they are contractually obligated to hold confidential.


WHEREFORE, the Data ALECs urge the Commission to:

a) deny the motion to compel related to Interrogatory Nos. 46 and 48 as moot; and

b) deny the motion to compel related to Request to Produce No. 13 insofar as the information sought is held by the Data ALECs under confidentiality agreements with third parties which prohibits its disclosure.

RESPECTFULLY SUBMITTED this 13th day of September, 2000.

HOPPING GREEN SAMS & SMITH, P.A.

By: 

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for the Data ALECs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U.S. Mail, hand delivery (*) this 13th day of September, 2000.

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