

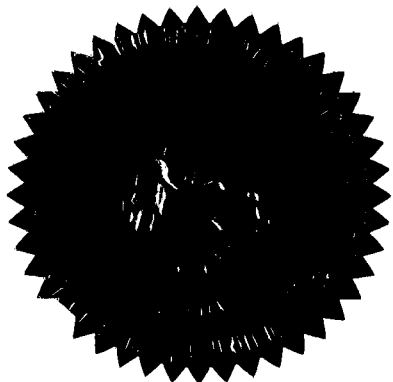
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 001797-TP

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In the Matter of

PETITION BY DIECA COMMUNICATIONS,  
INC. D/B/A COVAD COMMUNICATIONS  
COMPANY FOR ARBITRATION OF  
INTERCONNECTION AGREEMENT WITH  
BELLSOUTH TELECOMMUNICATIONS,  
INC.



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PROCEEDINGS:           PREHEARING CONFERENCE

BEFORE:                COMMISSIONER LILA A. JABER  
                          Prehearing Officer

DATE:                   Monday, June 11, 2001

TIME:                   Commenced at 1:30 p.m.  
                          Concluded at 1:49 p.m.

PLACE:                 Betty Easley Conference Center  
                          Room 152  
                          4075 Esplanade Way  
                          Tallahassee, Florida

REPORTED BY:          JANE FAUROT, RPR  
                          FPSC Division of Records & Reporting  
                          Chief, Bureau of Reporting  
                          (850) 413-6732

## 1 APPEARANCES:

2 VICKI GORDON KAUFMAN, McWhirter, Reeves,  
3 McGlothlin, Davidson, Dekker, Kaufman, Arnold &  
4 Steen, 117 South Gadsden Street, Tallahassee,  
5 Florida 32301, and CATHERINE F. BOONE, 101 Glenlake  
6 Parkway, Suite 650, Atlanta, Georgia 30328,  
7 appearing on behalf of Covad Communications Company

8

9 JAMES MEZA, III and Mike Twomey, BellSouth  
10 Telecommunications, Inc., c/o Nancy Sims, 150 South  
11 Monroe Street, Suite 400, Tallahassee, appearing on  
12 behalf of BellSouth Telecommunications, Inc.

13 FELICIA R. BANKS and JESSICA ELLIOTT, FPSC  
14 Division of Legal Services, 1540 Shumard Oak  
15 Boulevard, Tallahassee, Florida 32399-0850,  
16 appearing on behalf of the Commission Staff.

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## P R O C E E D I N G S

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COMMISSIONER JABER: Let's get started. Counsel,  
read the notice.

MS. BANKS: Pursuant to notice issued June 1st, 2001,  
this time and place have been set for a prehearing in Docket  
Number 001797-TP, petition by COVAD Communications Company for  
arbitration of unresolved issues in interconnection agreement  
with BellSouth Telecommunications, Inc.

COMMISSIONER JABER: All right. Let's take  
appearances.

MR. MEZA: Jim Meza and Mike Twomey on behalf of  
BellSouth. Mr. Twomey is participating via phone.

COMMISSIONER JABER: Mr. Twomey, the telephone  
connection is adequate, you can hear us?

MR. TWOMEY: It is adequate for me, I hope it is  
adequate for you.

COMMISSIONER JABER: We can hear you.

MR. TWOMEY: And I appreciate the Commission's  
allowing me to participate in this fashion.

COMMISSIONER JABER: No problem. Ms. Kaufman.

MS. KAUFMAN: Vicki Gordon Kaufman of the McWhirter  
Reeves law firm on behalf of COVAD Communications. And also on  
the phone we have Cathy Boone of COVAD.

COMMISSIONER JABER: Ms. Boone, you can hear us?

MS. BOONE: Yes. Thank you, Commissioner.

1 COMMISSIONER JABER: Ms. Banks.

2 MS. BANKS: Felicia Banks and Jessica Elliott on  
3 behalf of Commission Staff.

4 COMMISSIONER JABER: Thank you. Ms. Banks has  
5 briefed me before the prehearing conference, and I understand  
6 there are some issues that you all have reached agreement on.  
7 It looks like there are just a couple of preliminary matters.  
8 Unless someone has a burning desire to go page-by-page on this  
9 draft prehearing order, it is not my intent to do that.

10 Mr. Meza, is it your recommendation we just --

11 MR. MEZA: That's fine with us.

12 MR. TWOMEY: Yes. We have a strong desire not to go  
13 through it page-by-page.

14 COMMISSIONER JABER: You already got one wish for the  
15 day, Mr. Twomey. Let's talk about the preliminary matters.

16 MS. BANKS: Okay. Staff has -- wants to note that  
17 BellSouth has two pending requests for confidential treatment  
18 classifications. The first regarding the direct testimony of  
19 Bernard Shell, Exhibit WBS-1, which was filed on May 14th. And  
20 the second is a request for confidentiality treatment of  
21 BellSouth's responses to COVAD's first request for production  
22 of documents, Items Numbers 7, 18, 22, 32, and 33, which was  
23 filed on May 21st.

24 In its prehearing statement, BellSouth has also  
25 indicated of its intent to file a request for confidentiality

1 treatment for information regarding the rebuttal testimonies  
2 filed by Kientzle and Riolo by June 13th. That is all of the  
3 preliminary matters that staff has at this time. Parties have  
4 indicated to staff there may be an additional issue that may  
5 have been resolved or settled, and I will let Mr. Meza address  
6 that.

7 COMMISSIONER JABER: Before we get to that, on the  
8 pending confidentiality matters, it is my desire to just have  
9 staff prepare an order after this prehearing conference that  
10 addresses both of those matters. Is there a need to have a  
11 ruling on each of them today?

12 MR. TWOMEY: No. This is Mike Twomey.

13 MS. BOONE: No.

14 COMMISSIONER JABER: All right. Then we will just  
15 have -- Ms. Banks, you can issue -- you can draft a separate  
16 order for my signature.

17 MS. BOONE: I did want to mention -- oh, my gosh, I'm  
18 getting a lot of feedback. Can you all hear me?

19 COMMISSIONER JABER: We can hear you.

20 MS. BOONE: Okay. I did want to mention that the  
21 prehearing order does state that we are required to indicate to  
22 the parties at this time that COVAD does intend to use  
23 confidential information during the course of the hearing  
24 itself.

25 COMMISSIONER JABER: That's right.

1 MS. BOONE: It relates to the line sharing cost  
2 issues which are at issue in this case. And we do intend to  
3 use them, although we will recognize and adhere to the Florida  
4 prescripts about how to do that and keep it out of the record  
5 and that kind of thing, but we will be discussing confidential  
6 information.

7 COMMISSIONER JABER: Thank you, Ms. Boone.

8 Mr. Meza, that is your notice that COVAD intends to  
9 use confidential information in the hearing.

10 MR. MEZA: That is correct, Commissioner Jaber.

11 COMMISSIONER JABER: All right. And you were about  
12 to identify for us an additional issue that has been resolved?

13 MR. MEZA: Well, it's just a question. Issue 24 as  
14 raised by staff in the draft prehearing statement indicates  
15 that the parties may have reached a settlement regarding Issue  
16 24. It is not necessarily a settlement, but just an agreement  
17 that the issue may be resolved in another docket. And I'm just  
18 raising it before this Commission because there appears to be a  
19 discrepancy between the two responses between the parties.

20 MS. BOONE: Actually -- this is Cathy Boone. It is  
21 my understanding that BellSouth and COVAD both understand  
22 exactly what issue is at issue in Issue 24. We have agreed  
23 that all of the issues regarding pricing other than those with  
24 respect to line sharing have been addressed in a separate UNE  
25 pricing hearing. So they will not be at issue in the

1 arbitration between COVAD and BellSouth. The only pricing  
2 issues that will be heard that are presented in this petition  
3 are those regarding line sharing.

4 Do you agree with me, Mr. Twomey?

5 MR. TWOMEY: Yes. Well, that and the collocation,  
6 but that is separately covered in the other issue. But, yes,  
7 24 is only about line sharing rates.

8 MS. BOONE: So to the extent that we might need -- I  
9 don't know, I thought the parties' positions were both clear.  
10 But you're right, there does seem to be some --

11 COMMISSIONER JABER: It sounds like from reading the  
12 issue that what you really need to do, and you all can correct  
13 me if I'm wrong, it sounds like you really need to just reword  
14 Issue 24. Because just from hearing this fresh, it sounds like  
15 you are all saying the same thing. But as I read Issue 24 --  
16 and I suppose this is important to you -- as I read Issue 24, I  
17 don't think it covers only line sharing. Does that help you  
18 out? It sounds to me --

19 MS. BOONE: Yes, ma'am. I understand exactly what  
20 you're saying. I think Mr. Twomey and I can probably work on  
21 redrafting Issue 24. The reason it is phrased like that is  
22 that at the time that COVAD filed its petition the Florida  
23 pricing case had not yet been decided, so there were still open  
24 issues with respect to the contract between BellSouth and COVAD  
25 that we have subsequently agreed, some of which have been

1 resolved.

2 COMMISSIONER JABER: All right. Well, let's do this,  
3 and, Staff, to the degree you can help out with this I would  
4 like for you to. Reword Issue 24 and submit the new issue to  
5 staff counsel, only to the degree that it remains an issue. We  
6 don't need to identify an issue and say that it has been  
7 resolved, okay?

8 MS. BOONE: Got you. No problem.

9 COMMISSIONER JABER: Do you understand, Felicia?

10 MS. BANKS: Yes, Commissioner Jaber.

11 As I understand, the parties will redraft Issue  
12 Number 24 only to the extent that it remains at issue?

13 COMMISSIONER JABER: That is exactly right.

14 MS. BANKS: Okay.

15 COMMISSIONER JABER: Now, Ms. Banks, tell me when you  
16 would like that new issue. When is your goal of issuing the  
17 prehearing order?

18 MS. BANKS: I guess, if I could, Commissioner Jaber,  
19 just ask the parties when it might be possible they could  
20 submit it to me.

21 MR. TWOMEY: Cathy, this is Mike Twomey. Do you have  
22 the issue in front of you?

23 MS. BOONE: Yes, I do.

24 MR. TWOMEY: Do you believe if we struck the words  
25 "unbundled loops and" from the description --



1 MS. BOONE: I think that would be perfect.

2 MR. TWOMEY: Felicia, I don't know if it is  
3 appropriate to do this in this manner, but if you have your  
4 document in front of you, if you just strike the words  
5 "unbundled loops and" from the description, that will be an  
6 accurate representation of the issue. It should read, "Are the  
7 rates proposed by BellSouth for line sharing compliant with  
8 TELRIC pricing?" And that is the issue.

9 MS. BANKS: Okay, thank you.

10 COMMISSIONER JABER: Now, does that mean your  
11 positions need to be modified?

12 MR. TWOMEY: No.

13 MS. BOONE: No.

14 COMMISSIONER JABER: All right. And can we delete on  
15 the top of Page 25 the words, "the parties appear to have  
16 reached a partial agreement on this issue"?

17 MR. TWOMEY: Yes.

18 MS. BOONE: Yes.

19 COMMISSIONER JABER: Great. Thank you for your  
20 cooperation.

21 MR. TWOMEY: That was easy.

22 COMMISSIONER JABER: Yes. There has been a request  
23 at least on behalf of staff to take up direct and rebuttal  
24 testimony at the same time at the hearing. Is there any  
25 objection to that?

1 MS. BOONE: No. In fact, we strongly favor it.

2 MR. TWOMEY: BellSouth agrees.

3 COMMISSIONER JABER: All right. And everyone  
4 understands that opening statements will be limited to ten  
5 minutes?

6 MS. BOONE: Right.

7 COMMISSIONER JABER: And summaries of testimony will  
8 be limited to five minutes?

9 MR. TWOMEY: Yes.

10 MS. BOONE: Yes.

11 MR. TWOMEY: I have one question, Commissioner.  
12 Earlier on in this proceeding I thought we had agreed that the  
13 hearing would be concluded within two days. That was what the  
14 parties had represented to the staff. And I thought we were  
15 starting this hearing on Thursday the 28th. But I saw in the  
16 prehearing statement draft that the Commission is still  
17 contemplating that this hearing will begin on the 27th --

18 (Interruption.)

19 MR. TWOMEY: -- that this hearing will begin on the  
20 27th.

21 COMMISSIONER JABER: Ms. Boone, are you still with  
22 us?

23 MS. BOONE: Yes, I am. My understanding was that it  
24 would start on the 27th and run for three days, if necessary.

25 MR. TWOMEY: Okay.

1 MS. BANKS: Mr. Twomey, this is Felicia Banks. Just  
2 to clarify, when it came around, I sent an E-mail to parties  
3 whether or not the three days would be needed. And it is my  
4 understanding that BellSouth thought only two days, but COVAD  
5 preferred to have the three days. And so that's why we left it  
6 at the three days. And since it had been slated to start on  
7 Wednesday, June the 27th anyway, we just went ahead and left it  
8 as it was originally in the schedule.

9 MR. TWOMEY: That's fine. I just wanted to get some  
10 clarification. I hadn't talked to Ms. Boone in awhile, and I  
11 thought that we agreed it was two days. I may need to have  
12 some witnesses specially set, but we can address that as we get  
13 closer to the hearing.

14 COMMISSIONER JABER: And, of course, you all  
15 understand that is not an invitation to --

16 MS. BOONE: No. And hopefully we will be done in two  
17 days, exactly.

18 COMMISSIONER JABER: I will note that the third day  
19 is a Friday.

20 MS. BOONE: With respect to witnesses, as well, I was  
21 looking over the prehearing order, it is my understanding that  
22 COVAD witnesses were going to go first and that we had  
23 submitted an order of those witnesses, but it appears to be  
24 different on this list.

25 COMMISSIONER JABER: On Page 6, I've got the COVAD

1 witnesses going first.

2 MS. BOONE: Okay.

3 COMMISSIONER JABER: Oxman, Allen, Seeger.

4 MS. BOONE: Correct.

5 COMMISSIONER JABER: I don't know what --

6 MS. BOONE: I'm sorry, I was looking over here at the  
7 exhibit list maybe.

8 COMMISSIONER JABER: That may need to be redone. The  
9 exhibits list I think has to match up the order of witnesses,  
10 Felicia, or it certainly can. But that is not what will govern  
11 the order of witnesses. If you look at Page 6 of your draft  
12 prehearing order --

13 MS. BOONE: Okay.

14 COMMISSIONER JABER: -- that will govern the order of  
15 witnesses. Would you take a quick look at that, please.

16 MS. BOONE: Yes, ma'am, I'm looking right now.

17 COMMISSIONER JABER: BellSouth, do the same.

18 MS. KAUFMAN: I would just say, Commissioner Jaber,  
19 that when Ms. Banks combines the direct and the rebuttal, on  
20 our rebuttal Mr. Riolo appears once by himself, and that is  
21 correct. So when she combines them, we would ask that he would  
22 appear before the panel on which he is one member. The rest of  
23 the witnesses are shown in both places.

24 MS. BOONE: Yes. The witness order is correct  
25 according to COVAD.

1           COMMISSIONER JABER: All right, thank you. Ms.  
2 Banks, the request is that Mr. Riolo's exhibit on the exhibit  
3 list be indicated first before the panel. Is that it, Ms.  
4 Kaufman?

5           MS. KAUFMAN: Well, and also that he appear first and  
6 present -- since we are combining the direct and rebuttal, that  
7 he would follow Mr. Seeger and then we would have the panel of  
8 Kientzle and Riolo.

9           MR. TWOMEY: Yes. This is BellSouth. Our witnesses  
10 were presented in the prehearing statement that we submitted in  
11 alphabetical order. We have two other hearings in that week in  
12 other states. And adding into the fact that we are starting on  
13 the 27th, I'm going to have to submit a list of the order of  
14 the witnesses. And I can do that by the end of today, Felicia,  
15 to you by E-mail.

16           COMMISSIONER JABER: Thank you, Mr. Twomey.

17           MS. BOONE: Mike, if you need any special settings,  
18 just call me and we will be happy to work with you.

19           MR. TWOMEY: Well, I appreciate that. I thought we  
20 were going Thursday and Friday because I thought one of my  
21 witnesses wouldn't be available until Friday, but he is  
22 obviously going to have to be available Thursday because I  
23 think it is very likely we will finish in two days.

24           COMMISSIONER JABER: We should do these things by  
25 phone more often.

1 MR. TWOMEY: I agree.

2 MS. BOONE: See how friendly we are.

3 COMMISSIONER JABER: I just see that. Ms. Banks will  
4 be expecting a modified list of order of witnesses for  
5 BellSouth by the end of the day. But, Mr. Twomey, I think that  
6 it doesn't sound like the parties object. So if that has to be  
7 also taken up at the beginning of the hearing, I'm sure that is  
8 not a problem.

9 MR. TWOMEY: I don't think it will be a problem. I  
10 think Ms. Boone is probably in at least one of the other  
11 hearings that I'm talking about.

12 COMMISSIONER JABER: All right. Are there any  
13 changes to the draft prehearing order?

14 MS. BANKS: Excuse me, Commissioner Jaber. I just  
15 want to get clarification on what was stated earlier about, I  
16 guess, the tentative order of witnesses by COVAD; Oxman, Allen,  
17 Seeger, and then Riolo?

18 MS. BOONE: Right. And then the Riolo/Kientzle  
19 panel.

20 MS. BANKS: Okay. I just wanted to get  
21 clarification. And then the last one would be -- okay. Thank  
22 you.

23 COMMISSIONER JABER: Ms. Kaufman, any changes to the  
24 prehearing order?

25 MS. KAUFMAN: No, ma'am.

1 COMMISSIONER JABER: Mr. Meza?

2 MR. MEZA: No, ma'am.

3 COMMISSIONER JABER: Mr. Twomey? Ms. Boone?

4 MR. TWOMEY: I have no other issues.

5 COMMISSIONER JABER: All right.

6 Ms. Banks, is there anything else we all need to know  
7 before I adjourn the prehearing conference?

8 MS. BANKS: Staff is unaware of anything else  
9 pending.

10 COMMISSIONER JABER: Okay. Well, I thank you all for  
11 cooperating.

12 MR. TWOMEY: Well, we thank you very much for  
13 allowing us to participate by telephone.

14 MS. BOONE: Very much.

15 COMMISSIONER JABER: And, Mr. Twomey, we will see you  
16 on the 27th, then.

17 MR. TWOMEY: I will be there.

18 MS. BOONE: It would be very disappointing if you  
19 weren't, Mike.

20 COMMISSIONER JABER: We will adjourn this prehearing  
21 conference. Thank you.

22 (The hearing concluded at 1:49 p.m.)

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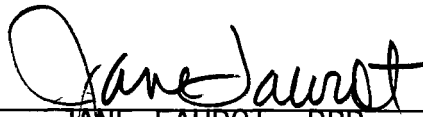
1 STATE OF FLORIDA     )  
2                             :     CERTIFICATE OF REPORTER  
3 COUNTY OF LEON        )

4  
5 I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting  
6 FPSC Commission Reporter, do hereby certify that the foregoing  
7 proceeding was heard at the time and place herein stated.

8 IT IS FURTHER CERTIFIED that I stenographically  
9 reported the said proceedings; that the same has been  
10 transcribed under my direct supervision; and that this  
11 transcript constitutes a true transcription of my notes of said  
12 proceedings.

13 I FURTHER CERTIFY that I am not a relative, employee,  
14 attorney or counsel of any of the parties, nor am I a relative  
15 or employee of any of the parties' attorney or counsel  
16 connected with the action, nor am I financially interested in  
17 the action.

18 DATED THIS 13TH DAY OF JUNE, 2001.

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JANE FAUROT, RPR  
FPSC Division of Records & Reporting  
Chief, Bureau of Reporting  
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