

ORIGINAL

MCWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:

TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

September 7, 2001

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 960786-TL

Dear Ms. Bayo:

On behalf of DIECA Communications, Inc. d/b/a Covad Communications, Inc. (Covad), enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Response of DIECA Communications, Inc. d/b/a Covad Communications, Inc. to Suggestion by Staff to Strike Testimony of Colette Davis.

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of)
BellSouth Telecommunications, Inc.'s) Docket No. 960786-TL
Entry into InterLATA Services Pursuant)
To Section 271 of the Federal) Filed: September 7, 2001
Telecommunications Act of 1996)
_____)

**RESPONSE OF DIECA COMMUNICATIONS, INC. d/b/a
COVAD COMMUNICATIONS, INC. TO SUGGESTION BY STAFF TO
STRIKE TESTIMONY OF COLETTE DAVIS**

DIECA Communications, Inc. d/b/a Covad Communications, Inc. (Covad) hereby responds to Staff's suggestion that the Prehearing Officer strike, on his own motion, essentially all of the testimony filed by Covad witness, Colette Davis.¹ Ms. Davis' testimony should not be stricken. It is directly relevant to the issues to be considered in this case.

1. In this docket, the Commission will consider whether BellSouth Telecommunications, Inc. (BellSouth) has complied with the 14 point Checklist contained in the Federal Telecommunications Act of 1996 (Act). The purpose of the hearing in this matter is for the Commission to determine whether BellSouth is in compliance with those Checklist items at the time the Commission conducts its review. Both the Federal Communications Commission (FCC) and the Department of Justice (DOJ) have clearly indicated that when they review a state's recommendation as to 271 relief, they want to be informed about the RBOC's performance at the time of the state's evaluation. This is the very sort of information Covad seeks to present in regard to whether BellSouth is providing nondiscriminatory access to loops.

¹Staff suggests that Ms. Davis' testimony at page 2, line 17 - page 17, line 4 and page 17, line 10 - page 19, line 18 be stricken. This is all Ms. Davis' substantive testimony.

2. Apparently, Staff seeks to strike Ms. Davis' testimony because it believes the testimony is "OSS-related." However, Covad was very careful in its testimony to refrain from discussing the functionality of BellSouth's OSS.² Instead, Covad's testimony is directly related to compliance with non-OSS Checklist items.

2. Checklist Item No. 4³ relates to whether BellSouth provides nondiscriminatory access to loops. Ms. Davis' testimony squarely and directly addresses this issue.⁴ Ms. Davis relates Covad's experience in attempting to secure access to unbundled loops from BellSouth and the numerous, discriminatory situations it has faced in attempting to do so.

3. Ms. Davis' testimony also addresses line sharing and the many problems Covad has experienced in dealing with BellSouth in an attempt to receive line shared loops.⁵ Line sharing is an unbundled network element (UNE) to which BellSouth must offer nondiscriminatory access in order to demonstrate Checklist compliance. Covad's testimony provides direct and concrete evidence that BellSouth has failed to comply with this Checklist item.

4. Finally, Ms. Davis discusses BellSouth's own reported performance as to loop access

² At page 2, line 17-20, Ms. Davis says: "Some of Covad's most serious problems are with OSS, particularly the failure of LENS to successfully support pre-ordering and ordering of xDSL and line shared loops, but I understand that those issues are not being addressed in this docket." And Covad did not address OSS issues in its testimony per its understanding of the Commission's prior orders. However, Covad could not possibly have contemplated so expansive a reading of "OSS-related" that it would not even permit Covad to describe to the Commission its inability to obtain nondiscriminatory access to loops.

³Issue No. 5 in Order No. PSC-01-1025-PCO-TL at 9.

⁴See Davis testimony at pages 3-8.

⁵See Davis testimony, pages 8- 9.

and line sharing.⁶ Ms. Davis does not take issue with the metrics themselves nor does she suggest other metrics which should be utilized or alternative calculations.⁷ Rather, she simply discusses the very metrics which BellSouth itself reports and how BellSouth's own reporting indicates its failure to provide nondiscriminatory access to loops. This is "result-oriented" testimony which indicates how BellSouth is actually performing and how such performance impacts Checklist compliance. If such testimony is not relevant to this Commission's consideration of 271 compliance, it is difficult to imagine any testimony that would be relevant.

5. During the conference call in which Staff informed the parties that it intended to recommend to the Prehearing Officer that certain testimony be stricken, Staff stated that the only type of testimony it expected to receive in the evidentiary portion of the docket was testimony related to "what" BellSouth offered, "where" BellSouth offered it, and "under what conditions" BellSouth made an offering. This tortured view of the type of evidence the Commission should consider is simply wrong. It would fail to permit ALECs to offer evidence as to what BellSouth **should** and **must** offer to demonstrate Checklist compliance and whether such offerings are appropriately available to them. If this type of evidence is not permitted, the 271 case will essentially be limited to BellSouth's paper view of the marketplace; the ALECs' point of view regarding what the Checklist requires and whether BellSouth has actually met that criteria in practice will be fatally omitted. The case will basically turn into an academic exercise performed by BellSouth without any evidence of ALECs' real world experience.

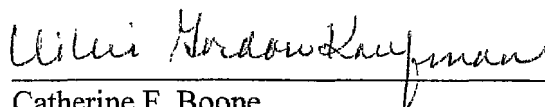
6. Covad urges the Commission to refrain from so narrowly limiting the evidence in this

⁶See Davis testimony, pages 10-19.

⁷Covad understands that those topics are the subject of other dockets.

case. The Commission should welcome, and evaluate as the trier of fact, information which ALECs have to bring to this process. After all, the purpose of the Act is to open local markets to competition. Who better to enlighten the Commission as to whether or not that has occurred than ALECs who are attempting to compete with BellSouth every day?

WHEREFORE, Covad requests that Ms. Davis' testimony not be stricken from the record in this portion of the proceeding.



Catherine F. Boone
Covad Communications Company
10 Glenlake Parkway, Suite 650
Atlanta, Georgia 30328-3495
(678) 222-3466 (telephone)
(678) 320-0004 (fax)
cboone@covad.com

Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525 (telephone)
(850) 222-5606 (fax)
vkaufman@mac-law.com

Attorneys for Covad Communications Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing the Response of DIECA Communications, Inc. d/b/a Covad Communications, Inc. to Suggestion by Staff to Strike Testimony of Colette Davis has been furnished by (*) hand delivery or by U. S. Mail on this 7th day of September, 2001, to the following:

(*) Beth Keating
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Jeremy Marcus
Blumenfeld & Cohen
1625 Massachusetts Avenue, NW
Suite 300
Washington DC 20036

Nancy B. White
c/o Nancy Sims
BellSouth Telecommunications, inc.
150 South Monroe Street
Suite 400
Miami Florida 32301

James Falvey
e.spire Communications
131 National Business Parkway
Suite 100
Annapolis Junction, MD 20701

Michael Gross
Florida Cable Telecommunications
Association
246 E. 6th Avenue
Tallahassee, Florida 32303

Kim Caswell
GTE
Post Office Box 110
FLTC0007
Tampa, Florida 33601

Richard Melson
Post Office Box 6526
Tallahassee, Florida 32314

Scott Sapperstein
Intermedia
One Intermedia Way
MC FLT-HQ3
Tampa, Florida 33619-1309

Donna McNulty
325 John Knox Road
Suite 105
Tallahassee, Florida 32303

Floyd Self/Norman Horton
Messer Law Firm
Post Office Box 1876
Tallahassee, Florida 32302

Pete Dunbar/Karen Camechis
Pennington Law Firm
Post Office Box 10095
Tallahassee, Florida 32301

Susan S. Masterton
Sprint
Post Office Box 2214
MC: FLTLH00107
Tallahassee, Florida 32316-2214

Ken Hoffman
Rutledge Law Firm
Post Office Box 551
Tallahassee, Florida 32302-0551

Andrew Isar
Ascent
3220 Uddenberg Lane, Suite 4
Gig Harbor, WA 98335

Matthew Feil
Florida Digital Network, Inc.
390 North Orange Avenue
Suite 2000
Orlando, Florida 32801

Angela Green, General Counsel
Florida Public Telecommunications Assoc
125 S. Gadsden Street
Suite 200
Tallahassee, Florida 32301-1525

Patrick Wiggins
Katz, Kutter Law Firm
12th Floor
106 East College Avenue
Tallahassee, Florida 32301

Scheffel Wright
Landers Law Firm
Post Office Box 271
Tallahassee, Florida 32302

Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street
Suite 812
Tallahassee, Florida 32399-1400

Rodney L. Joyce
600 14th Street, N.W.
Suite 800
Washington DC 20005-2004

John Kerkorian
MPower
5607 Glenridge Drive, Suite 300
Atlanta, GA 30342

CWA (Orl)
Kenneth Ruth
2180 West State Road 434
Longwood, FL 32779

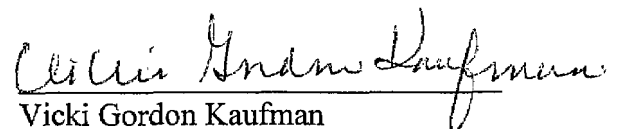
ITC^ DeltaCom
Nanette S. Edwards
4092 South Memorial Parkway
Huntsville, AL 35802-4343

Network Access Solutions Corporation
100 Carpenter Drive, Suite 206
Sterling, VA 20164

Swidler & Berlin
Richard Rindler/Michael Sloan
3000 K. St. NW #300
Washington, DC 20007-5116

Suzanne F. Summerlin
IDS Telecom L.L.C.
1311-B Paul Russell Road, Suite 201
Tallahassee, Florida 32301

Jim Lamoureux
AT&T Communications, Inc.
1200 Peachtree Street, NE
Room 8068
Atlanta, GA 30309


Vicki Gordon Kaufman