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September 9, 2003

VIA HAND DELIVERY

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Re: Docket No.: 981834-TP and 990321-TP

Dear Ms. Bayo:

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

- ▶ Post Hearing Statement of Issues and Positions (Issues Nos. 1A, 3 - 8) of DIECA Communications, Inc. d/b/a Covad Communications Company.

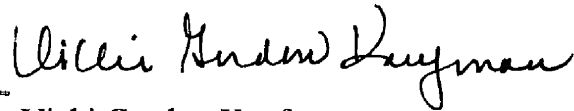
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Sincerely,

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Vicki Gordon Kaufman

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive Carriers for Commission action to support local competition in BellSouth Telecommunications, Inc.'s service territory.

Docket No. 981834-TP

In re: Petition of ACI Corp. d/b/a Accelerated Connections, Inc. for generic investigation to ensure that BellSouth Telecommunications, Inc., Sprint-Florida, Incorporated, and GTE Florida Incorporated comply with obligation to provide alternative local exchange carriers with flexible, timely, and cost-efficient physical collocation.

Docket No. 990321-TP

Filed: September 9, 2003

POST HEARING STATEMENT OF ISSUES AND POSITIONS (ISSUES NOS. 1A, 3 - 8) OF DIECA COMMUNICATIONS, INC., d/b/a COVAD COMMUNICATIONS COMPANY

DIECA Communications, Inc., d/b/a Covad Communications Company, ("Covad") pursuant to Order Nos. PSC-02-1513-PCO-TP, issued November 4, 2002, and PSC-03-0894-PHO-TP, issued on August 4, 2003, submits the following Post Hearing Statement of Issues and Positions in the above-captioned docket.

Following the hearing in this docket, Covad revised its position on the remaining issues, except Issues 5 and 7, to ensure that it was proposing to the Commission and Staff positions that, given the evidentiary record, were fair to the parties, consistent with the legal and factual record in the case, technically feasible, and which best advance the competitive telecommunications market in Florida.

ISSUE 1A: When should an ALEC be required to remit payment for non- recurring charges for collocation space?

Covad's Position **ILECs will bill for application fees, within 30 days of Application Response; for processing collocation orders, within 30 days

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of ILEC confirmation of the CLEC's Firm Order; and for collocation equipment, within 30 days of Space Acceptance Date. A CLEC may act as a certified vendor for an ILEC.**

Verizon and Sprint seek 50% of the non-recurring costs to provision a collocation space as an "up front" charge.¹ BellSouth does not. Why? Verizon and Sprint generally do not use vendors to build-out collocation space, and when they do resort to vendors, they certainly do not use a CLEC-vendor. Neither Verizon nor Sprint provided reasonable explanations for their refusal to use the same vendor that BellSouth is willing to use. Mr. Davis for Sprint asserted that Sprint needs the money up front because it is analogous to the construction industry and they "are trying to match up receipts with when we incur costs." (TR. 358). Mr. Bailey for Verizon asserted that Verizon does not mind a CLEC welding metal cages in its central offices, but has safety concerns over certified vendors pulling power cabling to its collocation space (although Verizon does not mind the CLEC telling Verizon what fuses to use). (TR. 515-19).

The real reason behind Sprint and Verizon's monopolistic policy is as simple as it is predictable: Money. When Covad, as a BellSouth certified vendor, does its own work in a Miami collocation, it is significantly less expensive than when Verizon does the same work in a Tampa collocation.² Accordingly, the Commission should reject Sprint and Verizon's effort to obtain "down-payments" on collocation space and oblige them to

¹ See Transcript of Hearing, Docket No. 981834-TP, Florida Public Service Commission, August 11-13, 2003 at pages 353-54 and 357-58 (Sprint); 492-93 and 515-520 (Verizon) (hereinafter referred to as "TR").

² See Covad Response to Verizon's First Set of Interrogatories, No. 11, FPSC Docket Nos. 981834-TP and 990321-TP, filed June 3, 2003 (Showing a mark-up by Verizon for 50 feet of #4 power cable of 80% over the cost for the same equipment in Miami).

cease their monopolistic policy of refusing a properly certified CLEC from running and terminating its own power.

For this issue, Covad proposes that the Commission adopt the following language:

CLECs will be billed for application fees within a 30-day billing cycle of the date when the ILEC provides an Application Response. The non-recurring charge for processing the firm order for collocation space preparation will be billed within a 30-day billing cycle of the date on which the ILEC confirms the CLEC's Firm Order for collocation.

Non-recurring charges for other collocation equipment and services (e.g., cable installation, cross-connects, etc) will be billed within a 30-day billing cycle of the date that the CLEC has accepted the requested collocation space with the provisioned other collocation equipment and services (Space Acceptance Date). If provisioning of other collocation equipment and services occurs after the Space Acceptance Date, the CLEC will be billed within a 30-day billing cycle of the date that the CLEC has accepted the provisioned other collocation equipment and services (i.e., the date the CLEC has tested and interconnected its facilities to the ILEC).

No ILEC may preclude a CLEC, if certified as a vendor, from running and terminating its own power facilities and installing other collocation equipment.

ISSUE 3: Should a CLEC have the option to transfer accepted collocation space to another CLEC? If so, what are the responsibilities of the ILEC and CLECs?

Covad's Position **Yes, transfer should be allowed if: (1) the central office is not at or near space exhaustion; (2) the ILEC approves (such approval not to be unreasonably withheld); (3) there are no unpaid balances; and (4) the transfer is in conjunction with the sale of the in-place collocation equipment.**

The Parties appear to be very close to agreement on this issue (TR 636-41), and

Covad does not object to the following language for Issue No. 3:

An CLEC shall be allowed to transfer collocation space to another CLEC under the following conditions: (1) the central office is not at or near space exhaustion; (2) the transfer of space is contingent upon the

ILEC's approval, whose permission will not be unreasonably withheld; (3) there are no unpaid collocation balances between the ILEC and the transferring CLEC; and (4) the transfer of the collocation space is in conjunction with the sale of the in-place collocation equipment to the same CLEC.

The responsibilities of the transferring CLEC shall include submitting a letter of authorization to the ILEC for the transfer, entering into a transfer agreement with the ILEC and the acquiring CLEC, and returning all access devices to the ILEC. The responsibilities of the acquiring CLEC shall include submitting an application to the ILEC for the transfer of the collocation arrangement, satisfying all legal requirements of its interconnection agreement with the ILEC, submitting a letter to the ILEC for the assumption of services, and entering into a transfer agreement with the ILEC and the transferring CLEC. The ILEC is responsible for ensuring that the above responsibilities are completely satisfied and the transfer of space is done as quickly as possible.

ISSUE 4: Should the ILEC be required to provide copper entrance facilities within the context of a collocation inside the central office?

Covad's Position **An ILEC shall permit a collocated CLEC to terminate copper entrance facilities to its collocated equipment only if the CLEC can demonstrate that use of copper (rather than fiber) facilities is warranted. Disputes concerning the CLEC's showing should be resolved under the parties' interconnection agreement (ICA).**

Like Issue 3, the Parties are not far apart on this issue. Indeed, Covad's position almost mirrors BellSouth's position. *See* Prehearing Order No. PSC-03-0894-PHO-TP, FPSC Docket Nos. 981834-TP and 990321-TP, filed August 4, 2003, at 22-23. Covad's and BellSouth's position statements vary in one material respect: Covad proposes that the CLEC be under an obligation to show that copper entrance facilities are "warranted" whereas BellSouth's position statement obliges the CLEC to show that they are "necessary." Covad is concerned that the use of the term "necessary" implies "there is no other available option", when

there may be a technically feasible fiber option that is not economically feasible. “Necessary” also may imply association with the “necessary and impair” standard of the Telecommunications Act of 1996; however, such a standard is inappropriate in this context because this is not an unbundling issue. The FCC standard upon which BellSouth relies for its position statement does not use the “necessary” language. (TR 645). Admittedly, it contains no standard at all. However, placing the burden on the CLEC to show copper is warranted *and* creating a presumption that fiber should be used for entrance facilities should be sufficient to limit those instances where a CLEC can meet its burden of showing that copper is warranted over fiber. Finally, Covad removed the last line of BellSouth’s position statement because it was dependant on the absence of an ICA. A “collocated CLEC” should have an ICA. Accordingly, Covad respectfully requests that the Commission adopt the position BellSouth proposes as modified by Covad.

ISSUE 5: Should an ILEC be required to offer, at a minimum, power in standardized increments? If so, what should the standardized power increments be?

Covad’s Position **Yes. Power, as defined for purpose of billing “per amp,” should be offered in one (1) amp increments. ILECs should be required to provision power in fuse size increments of five (5) amps and above, as available from the market.**

With regard to the manner in which Covad requests its power feeds – directly from the BellSouth or Verizon BDFBs – Covad’s position is well within the limits of all of the Parties’ positions, with the exception of BellSouth. Verizon proposes one (1) amp increments with a ten (10) amp minimum. (TR 494). Sprint takes a similar position.

(TR 354). BellSouth's witness, Mr. Milner, readily agreed that BellSouth *could* offer fused power in five (5) amp increments, but for "practical" reasons only offered power in ten (10) amp increments. (TR 161). Clearly, if Verizon can offer power in one (1) amp increments, it is not unreasonable for BellSouth to offer power in five (5) amp increments and to bill power in one (1) amp increments. Accordingly, Covad respectfully asks that the Commission adopt Covad's proposed resolution of this Issue.³

ISSUE 6A: Should an ILEC's per ampere (amp) rate for the provisioning of DC power to a CLEC's collocation space apply to amps used or fused capacity?

Covad's Position **An ILEC's per amp rate for the provisioning of DC power to a CLEC's collocation space may apply to either amps used or fused; however, in no event may an ILEC's billing structure recover more for electrical usage or provisioning than a CLEC's actual usage or an ILEC's actual costs.**

Because Covad proposes herein that the charge for power plant infrastructure be separated from the charge for electrical usage, Covad does not oppose using fused capacity as a proxy for requested capacity in charging for power plant infrastructure, as is done by BellSouth. (TR 157-58). With regard to an ILEC's charge for electrical usage, the rate should only apply to actual electrical usage.

Currently, the ILECs all charge a single Monthly Recurring Charge (MRC) for power based on ordered capacity. While BellSouth purports to charge on a "per fused amp" basis, it multiplies the charge by .6667 to reflect its fusing ratio – thereby creating an actual billing rate based on ordered capacity. Id. If the Commission sets the plant infrastructure rate (as either a MRC or NRC (non recurring charge), as Covad proposes in

³ Importantly, Covad does not take a position with regard to how power should be billed or provisioned when a CLEC uses its own BDFB.

Issue 6B below) apart from the electrical rate, Covad does not object to allowing BellSouth to continue this practice. Based on the evidence in the record, Covad also does not object to basing the plant infrastructure rate on the amps ordered by the CLEC, as is more fully described in Issue 6B. However, Covad only supports compensating the ILECs for costs actually incurred. Should the record in Phase II reflect that the ILECs do not incur the costs for plant infrastructure on a one-to-one basis with amps ordered, as asserted in the record to date, then the rate set for plant infrastructure in Phase II should be adjusted to reflect the ILECs' actual costs.

ISSUE 6B: If power is charged on a per-amp-used basis or on a fused capacity basis, how should the charge be calculated and applied?

Covad's Position **A CLEC should have two available power billing structures from which it may elect to compensate the ILEC for power: Average Expected Use or Metered Power. Under both structures, a CLEC may elect to pay a plant infrastructure charge as a MRC or a NRC.**

ISSUE 6C: When should an ILEC be allowed to begin billing a CLEC for power?

Covad's Position **Under both billing structures outlined in 6B: Billing for infrastructure should be reflected in the 30 day billing period following the Space Ready Date. Billing for electrical power should begin at actual usage.**

Two undisputed facts emerged from the hearing in Phase I of this docket: 1) under the current billing structure, the ILECs are over-compensated for electricity; and 2) some power plant infrastructure costs are incurred by the ILEC when a CLEC collocates and requests available power, for which the ILECs should be properly compensated. The current rate structure combines (a) the compensation for power plant infrastructure and

(b) electrical usage into one MRC which is billed based upon ordered amps (BellSouth bills on fused amps, but multiplies by .6667 to equal ordered amps. (TR 157-58)). While no party asserted that the current billing structure under-compensated the ILECs for power plant infrastructure⁴, the ILECs themselves admitted that they were over compensated for electrical power. (TR 186, 374). Because a CLEC, under standard network planning procedures, requests power it expects it will need – rather than power it currently needs – billing for electrical power based on ordered available amps will almost always result in an over charge for electrical usage. (165-171, 186). In order to address both the problem of over billing for electrical usage and the need to compensate the ILEC for the costs it incurs in making power available, Covad proposes the CLECs have two options for power billing:

1. **AVERAGE EXPECTED USAGE:** An ILEC shall bill an MRC per amp for either fused (reduced by a factor to reflect ordered capacity) or ordered capacity (not including a redundant feed) at a rate reflecting expected average actual electrical usage over time, as determined by the Florida Public Service Commission in Phase II of this docket. Costs associated with power plant infrastructure shall be billed, at the option of the CLEC, as either an NRC or as an MRC based upon ordered capacity as determined by the Florida Public Service Commission in Phase II of this docket; or

2. **METERED POWER:** Costs associated with power plant infrastructure shall be billed, at the option of the CLEC, as either an NRC or as an MRC based upon ordered capacity as determined by the Florida Public Service Commission in Phase II of this docket. ILECs shall provide an MRC reflecting the CLEC's actual electrical usage determined by metering, as set by the Florida Public Service Commission in Phase II of this docket.

Commissioners Davidson, Jaber and Deason all explored with BellSouth's witness, Mr. Milner, the option of separating an ILEC's infrastructure charge as a MRC

⁴ Indeed, Mr. Milner expressly represented that BellSouth is fully recovering all of its costs. (TR 185).

or a NRC from its electrical charge. Mr. Milner expressed BellSouth's willingness to provide for such a charge. (TR. 171,179,181, 193). For instance:

CHAIRMAN JABER: But a one-time fee for the 500 amps you would not object to. And maybe it is a payment plan or whatever that you accommodate in terms of billing, but you would not object to a one-time fee. And if they use it, great. If they don't use it, that is fine, too, because you have recovered what you believe your expenses are.

MR. MILNER: AbsolutelyBut we certainly would not be opposed to being paid up front for that infrastructure in one lump, or as it is now with recurring payments made against it.

(TR 179-180).

Accordingly, under the Average Expected Usage proposal, the ILEC is fully compensated for power plant infrastructure costs, either immediately or over time, and the CLEC pays for electrical usage based upon a percentage of ordered capacity designed to reflect actual expected usage. With this proposal, a CLEC is discouraged from ordering too much capacity by the infrastructure charge. In some instances, the electrical MRC will overcompensate the ILEC; in other instances, it properly compensates; and in the remaining instances, it will under-compensate. By arriving at an average expected percentage usage of ordered capacity over time, the Commission can provide CLECs with an option other than metering that fairly compensates the ILEC for both infrastructure and electrical costs while avoiding the costs of metering for the CLEC.

Under the metering option, the ILEC is, again, fully compensated for power plant infrastructure costs, either immediately or over time. However, with metering, the CLEC can chose to incur some up-front costs associated with metering (either purchasing and installing the meters itself or paying the ILEC to do so), but know that it is paying for

electricity actually used. With metering, the ILEC is fully compensated for the electrical costs it incurs.

Covad further proposes that CLECs be allowed to elect different power billing structures for different central offices, and after initial elections are made, a CLEC be allowed change its election with 60 calendar days prior written notice to the ILEC. This allows CLECs to manage the costs of metering within their respective business plans and provides the ILEC with ample notice of any proposed changes.

ISSUE 7: Should a CLEC have the option of an AC power feed to its collocation space?

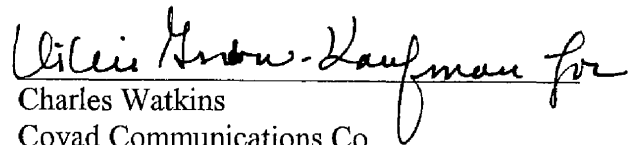
Covad's Position **Covad adopts and concurs with AT&T's position on Issue No. 7.**

ISSUE 8: What are the responsibilities of the ILEC, if any, when a CLEC requests collocation space at a remote terminal where space is not available or space is nearing exhaustion?

Covad's Position **Based on the record evidence that no CLEC in Florida has requested remote terminal collocation, this Issue should be deferred to another proceeding.**

Covad is concerned that by addressing the "what if" presented by this Issue without addressing the underlying issue of why no CLEC has even ever asked, much less reached the "what if" presented by this issue, the Commission will be creating a policy that implies that there are not impediments to remote terminal collocation in Florida. If the Commission wants to have a policy answer for an event that will never happen, it is free to formulate one, but Covad suggests that the Commission needs to answer the real question: "Why have no CLECs even asked for RT access, much less been denied it?" in order to better understand how such access should be addressed from a policy

perspective.⁵ Thus, Covad recommends that the Commission acknowledge that the question presented by this issue is not yet ripe based on the record evidence and that answering it should be deferred to another proceeding. While Covad is aware that ILECs will point to instances outside of Florida where a few CLECs have requested remote terminal collocation, the record is clear in Florida that no CLEC has even asked for remote terminal collocation, much less been denied access for lack of space. (TR 538, 205).⁶ It is hard to imagine an issue less ripe for consideration. Accordingly, Covad respectfully asks that the Commission find that this issue is not yet ripe and should be deferred to another proceeding.



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⁵ Sprint's remote terminal experience may provide some insight – over \$100,000, one and one-half years to market for ONE remote terminal collocation – which translates into over \$480,000,000 to collocate in BellSouth's Florida remote terminals alone. (TR 305-07).

⁶ Indeed, according to the Bigfoot Field Researchers Organization, credible sightings of Bigfoot are far more common in Florida than Remote Terminal collocation – 49 sightings since 1999 versus zero *requests* for remote terminal collocations. www.BFRO.net.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Post Hearing Statement of Issues and Positions (Issues Nos. 1A, 3 – 8) of DIECA Communications, Inc., d/b/a Covad Communications Company has been furnished by (*) hand delivery, (**) electronic mail and U.S. Mail this 9th day of September 2003, to the following:

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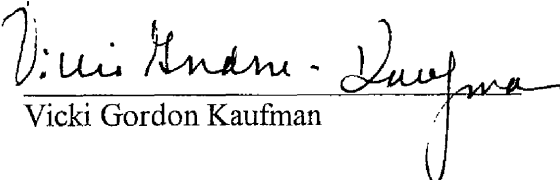
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