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October 23, 2003

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Mrs. Blanca S. Bayó
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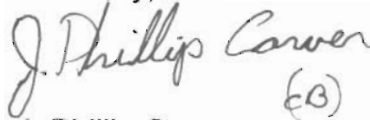
Re: Docket Nos. 981834-TP and 990321-TP (Generic Collocation)

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth's Memorandum In Opposition To Covad's Motion To Compel, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



J. Phillip Carver

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

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CERTIFICATE OF SERVICE
Docket No. 981834-TP and 990321-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
First Class U.S. Mail and Electronic Mail this 23rd day of October, 2003 to the following:

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(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Competitive)	
Carriers for Commission Action)	Docket No. 981834-TP
To Support Local Competition)	
In BellSouth's Service Territory)	
In re: Petition of ACI Corp. d/b/a)	
Accelerated Connections, Inc. for)	Docket No. 990321-TP
Generic Investigation into Terms and)	
Conditions of Physical Collocation)	
_____)	Filed: October 23, 2003

**BELLSOUTH'S MEMORANDUM IN OPPOSITION
TO COVAD'S MOTION TO COMPEL**

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its Memorandum in Opposition to the Motion to Compel the Second Set of Discovery filed by DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") and states the following:

1. Covad's Second Set of Discovery to BellSouth consists of 25 interrogatories and one production request. BellSouth responded to three of the interrogatories (Nos. 17, 18, and 19). BellSouth objected to the remaining discovery because it is completely irrelevant to the issues in Phase II of this proceeding, and is unduly burdensome as well. Moreover, at least four of the interrogatories would require BellSouth to engage in substantial speculation to even attempt to answer these questions. These interrogatories are objectionable for this additional reason. Given the objectionable nature of Covad's interrogatories, its Motion to Compel should be denied in its entirety.

2. This docket has, of course, been divided into two phases by the Commission's *Second Order Modifying Procedure* (Order No. PSC-03-0776-PCO-TP,

issued July 1, 2003). Under the Commission's Order, Phase I includes Issues 1-8 (technical issues and issues relating to the terms and conditions of collocation). Phase II includes Issues 9 and 10 (cost issues). More specifically, Issue 6A inquires whether power should be charged on a per fused amp or per used amp basis. Issue 6B raises the concomitant question of how power charges should be calculated, depending upon the resolution of 6A. Phase II involves setting the cost-based rates for the various collocation elements, including costs relating to power. Thus, there is certainly a relationship between Phase I and Phase II issues. However, the Commission has made it very clear that these two phases are separate, and that they are to remain separate. This necessarily means that issues are to be addressed (according to the division described above) in either Phase I or Phase II, but not both.

3. AT&T has previously moved to combine the evidentiary record of the two phases, and to have a single briefing schedule and a single Order. The Commission specifically rejected this proposal in the *Order Denying Motion for Modification of Procedural Schedule* (Order No. PSC-03-0910-PCA-TP, issued August 7, 2003). As BellSouth stated in its Response to AT&T's Motion to Compel, AT&T has attempted to violate the provisions of that Order by conducting discovery of matters that relate solely to Phase I, with the apparent intention of interjecting these matters into Phase II. With its Second Set of Discovery, Covad has now done the same. Covad, however, has filed a much more extensive, and much more burdensome, set of discovery than that previously propounded by AT&T.

4. In Covad's Motion to Compel, it claims that its interrogatories involve cost issues. Covad's analysis on this point, however, amounts to little more than the claim

that since some of the twenty five interrogatories contain the word “costs,” and Phase II is the cost phase of the proceeding, the interrogatories must be relevant. This analysis is both simplistic and inaccurate.

5. BellSouth has priced the infrastructure portion of the per fused amp charge that it proposes by using in the cost study a sampling of actual augments done throughout BellSouth’s region. Covad should be well aware of this, because this approach has been the subject of a significant amount of the testimony filed in this proceeding (See, Rebuttal Testimony of Jeffrey King, Surrebuttal Testimony of Bernard Shell). Even a cursory review of Covad’s questions, however, show that, contrary to Covad’s assertions, these questions have nothing to do with BellSouth’s actual power costs as these costs have been developed or presented in Phase II.

6. To give a few examples, interrogatory No. 6 contains 9 separate questions that are to be answered based on every new power plant constructed in Florida for the last seven years. Interrogatory No. 8 inquires as to the age of all BellSouth power plants in Florida, and Interrogatory No. 20 inquires as to the “total capacity in amperes of all BellSouth’s central offices.” Likewise, interrogatory No. 12 inquires, in part, as to the total amps ordered by every CLEC in every central office in which collocation exists. Covad also inquires as to the total capacity in amperes of all BellSouth central offices (Interrogatory no. 26). Again, none of this expansive discovery submitted by Covad has anything to do with the actual cost-based rates that BellSouth proposes, or with the cost study or methodology that supports these rates. These interrogatories are equally unrelated to any testimony filed by any other witness in Phase II. Finally, Covad also

fails entirely to provide any indication as to the requested information might be admissible in Phase II, or how it might be calculated to lead to discoverable evidence.

7. Covad asserts that not only is this evidence relevant to Phase II, it is also relevant to Phase I (Covad Motion, p. 4). However, Covad's position is based on the unsupportable contention that the Phase I and Phase II issues overlap, so that discovery relating to Phase I issues can be properly pursued through discovery on Phase II issues. This unsupportable position conveniently ignores the fact that the Commission has explicitly preserved the separation between these two phases. Nevertheless, Covad claims that it needs the requested information to determine the rate that would apply under a sort of compromise proposal that was discussed during the Phase I hearing, and that Covad now says it supports. Specifically, this proposal would be to charge separately for infrastructure used to provide power, and for the actual power. None of the witnesses who have pre-filed testimony in Phase II proposes this approach. In point of fact, no witness in Phase I advocated this approach either. Instead, this approach was discussed solely during the hearing as a potential resolution of Issues 6A and 6B.

8. The discovery that Covad has propounded would be overbroad in any event. However, if this discovery had any relevance to either phase of this proceeding, it would be to Phase I. This is evidenced by the fact that Covad admits that it is pursuing this discovery to try to follow up on the suggestion that was discussed (and made part of the record) in Phase I. Given the fact that the Commission has specifically ruled that the Phase I and Phase II issues are separate, Covad should not be allowed to misuse discovery in Phase II to develop (after the fact) Phase I issues.

9. Covad has also, in effect, conceded that its original interrogatories and production request were burdensome. Rather than taking the typical route of moving to compel a response to its actual discovery requests, Covad has proposed in its Motion discovery of a reduced scope that has never actually been propounded to BellSouth. In other words, Covad has taken the procedurally suspect route of glossing over what it actually requested through discovery, and, instead, moving to compel responses to a reduced set of discovery requests that have never actually been propounded on BellSouth. Further, while Covad's "compromise" discovery proposal is certainly less burdensome than the actual discovery Covad propounded, these new discovery requests are still burdensome.

10. Specifically, responding to the discovery would still require the manual review of records on a central office by central office basis. Although the time to respond to the interrogatories would decrease from that required to respond to the original discovery, it would still pose a burden. BellSouth estimated in its original objection that responding to Interrogatories 6 and 7 would require more than 20,000 hours of labor. Covad's latest proposal could be responded to in approximately 500 hours. In other words, approximately eight forty hour weeks would be required to respond to this fundamentally irrelevant discovery.

11. As to Interrogatory Nos. 23-31, the burden would be even worse. Covad's latest request is for information for 20 central offices over a period of more than seven years. BellSouth estimates that the manual record search required to comply with this request would entail approximately 2,000 hours of labor.

12. Finally, BellSouth has objected to interrogatory Nos. 13-16 because they are not only irrelevant, they also call for speculation. BellSouth has also objected to Request to Produce No. 11 since it calls for the production of documents used to develop answers to these objectionable interrogatories. In Interrogatory No. 13, Covad inquires as to the charge for the infrastructure portion of the power charge would be, if the Commission required BellSouth to recover costs in a separate, nonrecurring charge. Interrogatories 14-16 are derivative of 13, in that they are essentially follow-up questions. Interrogatories 13-16 are all irrelevant for the reasons discussed above. Specifically, they are simply attempts by Covad to misuse Phase II discovery to develop information that relates solely to Phase I issues. Interrogatory 13 is also burdensome, in that it would require BellSouth to perform a cost study in order to answer the question. Moreover, the cost study could only be performed if BellSouth engages in a great deal of speculation.

13. If the Commission were to ignore the record evidence in Phase I and order BellSouth to adopt an approach that no party actually proposed (i.e., having a non-recurring charge for power infrastructure while charging for the actual power on a recurring basis) then BellSouth would have to perform a cost study to arrive at a resulting rate. Given the fact that there was no actual evidence submitted in Phase I to support this approach, it is difficult to know how the Commission could reach this decision. It is equally difficult to know what the Commission would order BellSouth to do, specifically, if it did adopt this approach. Put another way, it is impossible to know exactly how BellSouth would comply with a hypothetical, currently nonexistent Order, without knowing the specifics of this Order. BellSouth could only attempt to comply with

Covad's request by developing a cost study based on assumptions as to what the Commission might order. In other words, BellSouth can only comply with the request by engaging in a great deal of speculation.

14. Covad's request becomes even more speculative given the fact that Covad has, in effect, asked BellSouth to develop a cost study that violates TELRIC principles. During the course of the Phase I hearing, there were a number of discussions about separating out infrastructure from energy costs, but the discussions did not assume that infrastructure costs would be captured through a non-recurring rate. Nevertheless, Covad has asked BellSouth to respond to Interrogatory No. 13 by assuming that the Commission would order that these costs be recovered in this manner. As BellSouth stated in its objection to this request, infrastructure costs are capitalized and depreciated over a set period of time. Accordingly, recovery of this type of cost should be on a recurring basis¹.

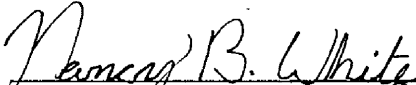
15. Thus, Covad is not just improperly pursuing a Phase I issue in Phase II discovery, requiring BellSouth to engage in speculation, and demanding that BellSouth perform a burdensome cost study based on this speculation. Covad is also assuming that the Commission would order that the subject rate be structured in a way that would violate cost standards promulgated by the FCC and included in the pertinent federal regulations. Obviously, these interrogatories, which embody layer upon layer of speculation, are objectionable.

For the reasons set forth above, Covad's Motion to Compel should be denied in its entirety.

¹ See, § 51.507, Code of Federal Regulation.

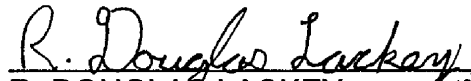
Respectfully submitted this 23rd day of October, 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.



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