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October 27, 2003

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
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Betty Easley Conference Center  
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Re: Docket No.: 000121A-TP

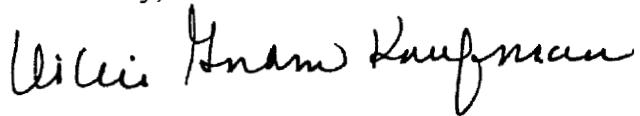
Dear Ms. Bayo:

On behalf of DIECA Communications, Inc. d/b/a Covad Communications Company, AT&T Communications of the Southern States, LLC and MCI WorldCom, enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ DIECA Communications, Inc., d/b/a Covad Communications Company's AT&T Communications of the Southern States, LLC and MCI WorldCom's Response to BellSouth Telecommunications, Inc.'s Motion to Modify Seem Plan.

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

VGK/bae  
Enclosure

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into the Establishment of  
Operations Support Systems Permanent  
Performance Measures for Incumbent Local  
Exchange Telecommunications Companies  
(BELLSOUTH TRACK)

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Docket No.: 000121-A-TP  
Filed: October 27, 2003

**DIECA COMMUNICATIONS, INC., d/b/a COVAD COMMUNICATIONS  
COMPANY, AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC AND  
MCI WORLDCOM'S RESPONSE TO BELLSOUTH TELECOMMUNICATIONS,  
INC.'S MOTION TO MODIFY SEEM PLAN**

DIECA Communications, Inc., d/b/a Covad Communications Company (Covad), AT&T Communications of the Southern States, LLC (AT&T) and MCI WorldCom (MCI), collectively referred to herein as the Competitive Carriers, hereby serve and file this Response to the Motion of BellSouth Telecommunications, Inc. (BellSouth) to Modify SEEM Plan (BellSouth's Motion). BellSouth's Motion should be denied for three reasons: 1) the Commission has jurisdiction over the SEEM Plan to protect Florida's citizens from anti-competitive behavior, including enforcement of BellSouth's 271 obligations; 2) BellSouth remains obligated to provide non-discriminatory access to line sharing both under the FCC's *Triennial Review Order*<sup>1</sup> and the Telecommunications Act of 1996; and 3) excusing BellSouth from providing non-discriminatory access to line sharing under the SEEM Plan is against the public interest and the purpose of the SEEM Plan.

**I. The Purpose of the SEEM Plan is to Discourage Anti-Competitive Behavior, Encourage Fair and Effective Competition, and Enforce BellSouth's 271 Obligations.**

BellSouth's Motion should be denied because – under applicable state law – there is a

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<sup>1</sup> The Federal Communications Commission ("FCC") released its *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking* (FCC-03-36) *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket No. 01-338, *et al.*, FCC 03-36 (rel. Aug. 21, 2003) (*Triennial Review Order*).

mandate to continue line sharing under the SEEM plan for as long as BellSouth is required to provide line sharing. BellSouth's entire motion is based on the assertion that the SEEM plan is narrowly tailored to enforce BellSouth's section 251 obligations.<sup>2</sup> This is a dramatic misstatement of the law: The Commission's jurisdiction over the SEEM Plan is based on Florida statutes designed to ensure "the development of fair and effective competition" ((F.S.A. §364.01(3)) and to preclude anticompetitive behavior (F.S.A. §364.01(4)(g)). In addition to discouraging anti-competitive behavior and encouraging fair and effective competition, in BellSouth's own words, "the purpose of the enforcement provisions of the [SEEM] plan is to prevent 'backsliding' after BellSouth obtains authority to provide interLATA service."<sup>3</sup>

In contravention of its own previous advocacy, BellSouth now attempts to avoid any relationship to its 271 obligations or the jurisdictional basis of the SEEM plan. In its Motion, BellSouth asserts that "a measurement plan is simply a mechanism that can be utilized to ensure that an RBOC meets its obligations under 251."<sup>4</sup> The reason BellSouth feels obliged to divorce the SEEM Plan from enforcement of BellSouth's 271 obligations and the Commission's jurisdiction is because BellSouth remains obligated to provide non-discriminatory access to line sharing both under the Triennial Order and section 271 of the Telecommunications Act of 1996.

## **II. BellSouth is Still Obligated to Provide Non-Discriminatory Access to Line Sharing Provisioning, Maintenance and Repair.**

### **A. The *Triennial Review Order* requires BellSouth to continue providing access to Line Sharing.**

BellSouth is not a benevolent monopoly. It *only* provides access to line sharing because

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<sup>2</sup> BellSouth's Motion at ¶ 1 (Asserting that "line sharing is no longer an unbundled network element that incumbent LECs are required to offer pursuant to Section 251 of the Act. For this reason, BellSouth should be relieved of any further obligation to pay SEEM penalties that relate to the provision of line sharing.").

<sup>3</sup> BellSouth Telecommunications, Inc. Brief of the Evidence, FPSC Docket 000121-TP, filed May 31, 2001, p. 1.

<sup>4</sup> BellSouth's Motion at ¶ 2.

it has been and remains obligated to do so.<sup>5</sup> Indeed, the FCC expressly outlined the ILECs' continuing line sharing obligations in the *Triennial Review Order*: "In order to implement the line sharing transition plan described above, we find that it is necessary to reinstate certain rules concerning the HFPL . . . . Incumbent LECs must condition loops to enable requesting carriers to access the HFPL . . . . incumbent LECs must provide physical loop test access points *on a nondiscriminatory basis* for the purpose of loop testing, maintenance, and repair activities."<sup>6</sup> Accordingly, BellSouth remains obligated to provision, maintain and repair line sharing on a non-discriminatory basis under the terms of the *Triennial Review Order*.

**B. Section 271 of the Telecommunications Act of 1996 also requires that BellSouth provide access to line sharing.**

BellSouth is also obligated to provide access to line sharing under section 271 of the Telecommunications Act. The FCC stated in the *Triennial Review Order* that "section 271 requires BOCs to provide unbundled access to elements not required to be unbundled under section 251 . . . ."<sup>7</sup> The FCC went on to state that "BOCs must continue to comply with any conditions required for approval consistent with changes in the law."<sup>8</sup> There can be no question that section 271 Checklist Item 4 requires the Bells to provide access to line sharing. Checklist Item 4 requires the Bells to provide access to "local loop transmission from the central office to the customer's premises, *unbundled from local switching or other services*."<sup>9</sup> The HFPL is clearly a form of loop transmission – loop transmission that the Bells themselves routinely use to provide xDSL services separately from narrowband voice services.<sup>10</sup> Indeed, in describing the

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<sup>5</sup> BellSouth's Motion at ¶¶ 6 and 7 (outlining the *Triennial Review Order's* grandfathering of existing line sharing customers and the continuing availability of line sharing during a three (3) year transition period).

<sup>6</sup> *Triennial Review Order* at ¶ 268 (emphasis added).

<sup>7</sup> TRO ¶ 659.

<sup>8</sup> TRO ¶ 665.

<sup>9</sup> See 47 U.S.C. § 271(c)(2)(B)(iv).

<sup>10</sup> In other words, Bell customers typically purchase narrowband voice services without also purchasing xDSL, and pay a separate monthly fee in order to add xDSL services to their local loop.

high frequency portion of the loop in the *Line Sharing Order*, the FCC stated that “requesting carriers may access unbundled loop functionalities, such as *non-voiceband transmission frequencies, separate from other loop functions*” – distinguishing the high frequency loop transmission path from the narrowband frequencies used for circuit switched voice services.<sup>11</sup> Thus, in light of the clear statutory language in Checklist Item 4, there is no question that the Bell companies remain under a statutory obligation to offer unbundled HFPL loop transmission to competitors.

A long line of FCC 271 orders confirms the *continuing* obligation of BellSouth companies to offer unbundled access to HFPL loop transmission after 271 approval. Since the Bells first implemented access to line sharing, the FCC has consistently looked at the non-discriminatory availability of line sharing as part of its review of RBOC compliance with Checklist Item number 4.<sup>12</sup> To this day, months after its decision to eliminate the line sharing UNE, and even after the rules in the FCC’s *Triennial Review Order* have become effective, the FCC continues to look at the non-discriminatory availability of line sharing as an integral component of its Checklist Item 4 analysis in section 271 proceedings<sup>13</sup> – even where the section 271 application at issue was filed more than a month after the FCC voted to eliminate the line sharing UNE *and* the FCC Order granting the application was issued two weeks after the

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<sup>11</sup> See *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order in CC Docket No. 98-147 Fourth Report and Order in CC Docket No. 96-98, FCC 99-355, 14 FCC Rcd. 20912, 20923 at ¶ 18 (1999).

<sup>12</sup> See, e.g., *Joint Application by SBC Communications, Inc., et al., for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29, ¶¶ 214-219 (2001).

<sup>13</sup> See *Application by Qwest Communications International, Inc., for Authorization to Provide In-Region, InterLATA Services in Minnesota*, Memorandum Opinion and Order, WC Docket No. 03-90, FCC 03-142, para. 53, and App. C, ¶¶ 50-51; *Application by SBC Communications, Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, WC Docket No. 03-138, FCC 03-228, paras. 133-143; and *Application by SBC Communications, Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Illinois, Indiana, Ohio and Wisconsin*, Memorandum Opinion and Order, WC Docket No. 03-167, FCC 03-243, issued October 15, 2003, paras. 133-143.

*Triennial Review Order* became effective.<sup>14</sup> In that Order, the FCC continued to consider non-discriminatory access to line sharing under Checklist-Item 4:

¶ 142: Based on the evidence in the record, we conclude, consistent with the state commissions, that SBC provides unbundled local loops in accordance with the requirements of section 271 and our rules. Our conclusion is based on our review of SBC's performance for all loop types, which include voice-grade loops, xDSL-capable loops, digital loops, and high capacity loops, as well as our review of SBC's processes for hot cut provisioning, and *line sharing* and line splitting.

....

¶ 145. *Line Sharing and Line Splitting.* Based on the evidence in the record, we find that SBC provides nondiscriminatory access to the high frequency portion of the loop (*line sharing*). SBC's performance data for line shared loops demonstrate that it is generally in compliance with the parity and benchmark measures established in the application states.<sup>15</sup>

Manifestly then, non-discriminatory access to line sharing remains a requisite to 271 approval after the *Triennial Review Order*, and consequently, a requisite to compliance with 271 "back-sliding" provisions.<sup>16</sup> Despite a change in the law relied upon by BellSouth, BellSouth remains under a continuing obligation under section 271 of the Telecommunications Act of 1996 to provide non-discriminatory access to line sharing.

**III. Because BellSouth Remains Obligated to Provide Non-Discriminatory Access to Line Sharing, the SEEM Plan Should Continue to Enforce that Obligation.**

In accordance with the purposes of the SEEM Plan and the continuing obligation of BellSouth to provide non-discriminatory access to line sharing, BellSouth's Motion should be denied. It is strongly in the public interest that the customers of the Competitive Carriers are protected from discriminatory treatment by BellSouth. What BellSouth is really asking this Commission to do is grant BellSouth unfettered discretion to treat line sharing customers of CLECs in any manner it sees fit. If such discretion were responsibly handled by the Regional

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<sup>14</sup> See *id.* at ¶ 1.

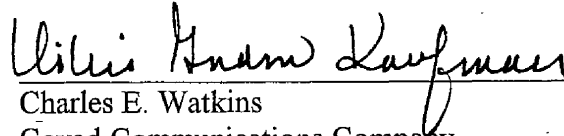
<sup>15</sup> *Id.* (emphasis added).

<sup>16</sup> TRO ¶¶ 659 and 665.

Bell Operating Companies and other monopolists in the past, the Sherman Act, the Modified Final Judgment, the Telecommunications Act of 1996 and the SEEM Plan would all be unnecessary. The SEEM plan is necessary for the very reasons that underlie the Commission's jurisdiction: discouraging anti-competitive behavior and encouraging fair and effective competition. Indeed, not long ago the Commission had to increase the penalty payments under the SEEM Plan in an effort to obtain better compliance from BellSouth under the plan. As long as BellSouth is obligated to provide parity treatment to its competitors and its competitors' customers, plans like the SEEM Plan are required to enforce that obligation.

#### IV. Conclusion

For the reasons set-forth in this Response, BellSouth's Motion to Modify the SEEM Plan to relieve it of any penalties for discriminatory treatment of line sharing customers should be denied.



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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing DIECA Communications, Inc., d/b/a Covad Communications Company, AT&T Communications of the Southern States, LLC and MCI WorldCom's Response to BellSouth Telecommunications, Inc.'s Motion to Modify SEEM Plan has been furnished (\*) hand delivery and by U.S. Mail this 27th day of October, 2003:

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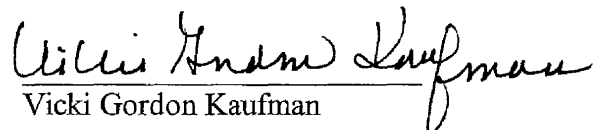
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