

Nancy B. White
General Counsel - Florida

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

December 2, 2003

Mrs. Blanca S. Bayó
Director, Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

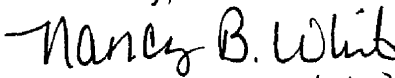
**Re: Docket No.: 030945-TP
Complaint of DIECA Communications, Inc., d/b/a Covad
Communications Company Against BellSouth
Telecommunications, Inc. for Breach of the Parties'
Interconnection Agreement and Unauthorized Discontinuance
of Service to Customers, Request for Maintenance of the Status
Quo, and Request for Expedited Relief**

Dear Ms. Bayó:

On October 16, 2003, BellSouth Telecommunications, Inc. thought it filed an Answer to Covad's Complaint with the Commission. We recently discovered that instead of filing the Answer with the Commission, BellSouth filed a letter stating that "today BellSouth served Covad with its Answer." Please note that Covad and Staff were both served with a copy of BellSouth's Answer via electronic mail and federal express. To correct this oversight, BellSouth is enclosing a copy of BellSouth's Answer to Covad's Complaint, which we ask that you file in the captioned docket. BellSouth believes this filing will not prejudice any parties.

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,


Nancy B. White (UA)

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

DOCUMENT NUMBER 030945-TP

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FPSC-COMMISSION CLERK

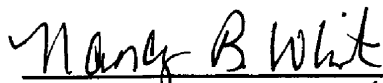
CERTIFICATE OF SERVICE
Docket No. 030945-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U. S. Mail this 2nd day of December, 2003 to the following:

Rosanne Gervasi
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Florida Public Service Commission
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2540 Shumard Oak Boulevard
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Charles Watkins
Senior Counsel
Covad Communications Co.
1230 Peachtree Street, N.E., 19th Floor
Atlanta, Georgia 30309
Tel. No. (404) 942-3494
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gwatkins@covad.com

Vicki Gordon Kaufman
McWhirter Reeves McGlothlin Davidson
Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Tel. No. (850) 222-2525
Fax No. (850) 222-5606
vkaufman@mac-law.com



Nancy B. White (CA)

LISA FOSHEE
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0754

October 16, 2003

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED FPSC
OCT 16 PM 4:14
COMMISSION
CLERK

**Re: Docket No.: 030945-TP
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Communications Company Against BellSouth Telecommunications,
Inc. for Breach of the Parties' Interconnection Agreement and
Unauthorized Discontinuance of Service to Customers, Request for
Maintenance of the Status Quo, and Request for Expedited Relief**

Dear Ms. Bayó:

Today, BellSouth Telecommunications, Inc. served Covad with its Answer to the Complaint of DIECA Communications, Inc. d/b/a Covad Communications Company, in the captioned matter.

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,

Lisa S. Foshee
Lisa S. Foshee (CS)

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

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

LISA FOSHEE
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
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Tallahassee, Florida 32301
(404) 335-0754

FILE COPY

October 16, 2003

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

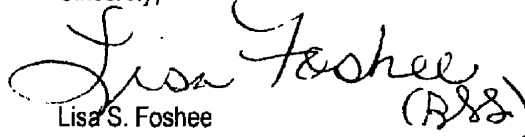
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Dear Ms. Bayó:

Today, BellSouth Telecommunications, Inc. served Covad with its Answer to the Complaint of DIECA Communications, Inc. d/b/a Covad Communications Company, in the captioned matter.

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,


Lisa S. Foshee (BSS)

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

LISA FOSHEE
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
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October 16, 2003

Via Electronic Mail and Federal Express

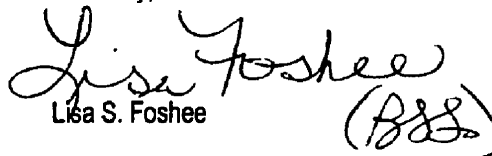
Vicki Gordon Kaufman
McWhirter Reeves McGlothlin Davidson
Kaufman & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301

**Re: Docket No.: 030945-TP
Complaint of DIECA Communications, Inc., d/b/a Covad
Communications Company Against BellSouth Telecommunications,
Inc. for Breach of the Parties' Interconnection Agreement and
Unauthorized Discontinuance of Service to Customers, Request for
Maintenance of the Status Quo, and Request for Expedited Relief**

Dear Ms. Kaufman:

Enclosed is BellSouth Telecommunications, Inc.'s Answer to the Complaint of DIECA Communications, Inc. d/b/a Covad Communications Company.

Sincerely,


Lisa S. Foshee (BSS)

Enclosures

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

**CERTIFICATE OF SERVICE
Docket No. 030945-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and Federal Express this 16th day of October, 2003 to the following:

Staff Counsel
Florida Public Service Commission
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vkaufman@mac-law.com


Lisa Spooner Foshee (B880)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of DEICA Communications, Inc.,)
d/b/a Covad Communications Company, against)
BellSouth Telecommunications, Inc. for breach) Docket No. 030945-TP
Of the Parties' Interconnection Agreement and)
Unauthorized Discontinuance of Service to)
Customers, Request for Maintenance of Status Quo,)
And Request for Expedited Relief.)

ANSWER OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") hereby Answers the Complaint of DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") and states as follows:

I. INTRODUCTION

To correctly decide this case, it is important to understand what this case is about and what this case is *not* about. BellSouth is not unilaterally terminating Covad's customers. Rather, BellSouth is replacing copper facilities with fiber facilities due to, in the case of at least two circuits, a Department of Transportation road move.¹ While it is true that this facilities replacement will preclude Covad from continuing to serve these few end users with line sharing, an arrangement to which the FCC recently held Covad is not entitled under section 251 of the Act, Covad has numerous alternatives by which it can continue to provide service to its end users. Covad ignores these alternatives, however, because in at least some cases they would require Covad to invest in facilities in the state of Florida, an investment Covad apparently does not want to make.

¹ In its Complaint, Covad identified most of the circuits allegedly at issue by Covad circuit identification number rather than by BellSouth circuit identification number. Thus, BellSouth has been unable to research all of the circuits. BellSouth has asked Covad to provide it further information. The two circuits BellSouth could research are being migrated from copper to fiber due to a DOT road move, but neither appears to be a circuit whose performance capabilities will be affected by the change from copper to fiber. BellSouth will supplement its Answer once the investigation into all of the cited circuits is complete.

Notably, Covad has not asked the Commission for any specific relief in this case other than to find that “BellSouth may not discontinue service to Covad or its customers....” This omission is due to the fact, BellSouth assumes, that were Covad to articulate the relief it really wants, the Commission would dismiss the Complaint on its face. First, the FCC recently confirmed that BellSouth is entitled to replace copper facilities in its network so long as BellSouth complies with the network disclosure rules.² *Triennial Review Order*, at ¶ 271. Second, BellSouth is not obligated to unbundle its packet network, and in particular, its DSLAMs. *Triennial Review Order*, ¶ 537. Third, BellSouth offers its wholesale DSL service via tariff on nondiscriminatory rates, terms, and conditions. Fourth, ALECs are not impaired without access to line sharing, thus confirming that Covad can compete and can compete vigorously using the multitude of options Covad has available to it to provision service to its end users. *Triennial Review Order*, at ¶¶ 255; 258.

In light of these explicit holdings, Covad argues that BellSouth is breaching the parties’ Interconnection Agreement by terminating service to Covad’s customers. This argument fails for two reasons. First, the Agreement does not obligate BellSouth to provide network elements or services to ALECs that do not exist in BellSouth’s network. Second, even if the Commission were to find that the Agreement requires BellSouth to maintain service to Covad’s customers, BellSouth has presented Covad with a myriad of alternatives by which Covad may serve these few customers.

In response to all of this, Covad resorts simply to claiming its “not fair.” *See e.g.* Testimony of William Seeger, NC Docket No. P-55, Sub 1457 (“I think the fairness of allowing BellSouth to force Covad to pay a monthly tariff price of \$30 for ADSL service that Covad is currently pay less than \$5 for today is obvious...”). Covad notably fails to look at fairness from

² Covad does not dispute that BellSouth complied with the network disclosure rules in this case.

BellSouth's perspective, however – what Covad wants is for BellSouth to assume all the cost and all the risk to provide Covad an arrangement to which it is no longer entitled under the Agreement and without which it is not impaired in its ability to compete. Moreover, Covad ignores the fact that many of BellSouth's copper retirements are due to road moves and damage caused by storms and natural disasters, situations beyond BellSouth's control. Thus, BellSouth respectfully requests that the Commission deny Covad's Complaint in its entirety.

II. SPECIFIC PARAGRAPHS

BellSouth responds to the numbered paragraphs in the Complaint as follows:

Introduction

1. BellSouth denies the allegations in Paragraph 1 of the Complaint. While BellSouth is replacing copper facilities with fiber as a result of, at least in some cases, a Department of Transportation road move, such network upgrade is not a breach of the Agreement, and does not result in the "customers' permanent loss of service from Covad." In fact, Covad can continue to provide service to these end-users via any of the following methods: (1) place its own DSLAM at the DLC remote terminal as does BellSouth in such a situation; (2) build its own loop facilities or lease loop facilities from a third party; (3) provision the end-user customer with Integrated Services Digital Network ("ISDN") Digital Subscriber Line ("IDSL") service; (4) partner with a cable broadband provider to provide cable modem broadband service; (5) purchase BellSouth's tariffed wholesale DSL offering; (6) purchase and maintain BellSouth's copper facility prior to its removal; (7) lease BellSouth's copper facility on a time and materials basis; (8) deploy a fixed wireless broadband technology; and (9) partner with a satellite broadband provider. Importantly, in concluding that line sharing was not a UNE, the FCC considered the fact that ALECs can deploy their own broadband facilities as easily as ILECs can

deploy theirs, and that the options available to ALECs to provide broadband services are such that ALECs are not impaired without line sharing. *See Triennial Review Order*, at ¶ 255. Thus, it is not that Covad's customers will have a "permanent loss of service," but that Covad will not be able to provide service at the \$0.61 rate it wants to pay.

When BellSouth is able to complete its research into all of the alleged circuits, BellSouth will respond further on the question of injunctive relief. BellSouth's research thus far indicates, however, that Covad is not entitled to an injunction because the circuits impacted will not affect Covad end users.

Parties

2. BellSouth can neither admit nor deny the allegations set forth in Paragraph 2 of the Complaint.

3. BellSouth admits the allegations in Paragraph 3 of the Complaint.

4. BellSouth admits the allegations in Paragraph 4 of the Complaint.

Jurisdiction

5. BellSouth admits that the Commission has jurisdiction over this dispute.

General Allegations

6. BellSouth admits that Covad orders certain network elements and services from BellSouth. BellSouth can neither admit nor deny the remaining allegations set forth in Paragraph 6 of the Complaint.

7. BellSouth admits the allegations in Paragraph 7 of the Complaint.

8. BellSouth admits the allegations in Paragraph 8 of the Complaint. BellSouth further states that it has complied with the parties' Agreement. Section 2.11 defines what comprises the High Frequency Spectrum Network Element. Without a copper loop, the element

does not exist. Thus, when BellSouth retires its facilities, as it is entitled to do pursuant to the *Triennial Review Order*, the High Frequency Spectrum Network Element, as defined in the Agreement, no longer exists. Consequently, Covad no longer has the right to purchase it. There is nothing in the Agreement that requires BellSouth to provide network elements that do not exist; conversely, there is no obligation for BellSouth to maintain facilities solely to provision network elements.

9. BellSouth admits the allegations in Paragraph 9 of the Complaint.

10. BellSouth admits that Covad has timely paid BellSouth for these circuits.

BellSouth can neither admit nor deny that Covad has complied with all relevant portions of the parties' Interconnection Agreement, but does not assert in this proceeding that Covad has breached the interconnection agreement.

11. BellSouth admits that Covad correctly quoted the Agreement, but denies the allegations set forth in Paragraph 11 of the Complaint. BellSouth further states that Attachment 7 deals with Billing and Billing Accuracy Certification. Section 1.8 of Attachment 7 addresses situations in which Covad fails to pay or misuses BellSouth's facilities. As Covad itself has admitted, Covad has paid for these arrangements and thus Section 1.8 is not applicable. Moreover, Section 1.8 does not speak to the situation in which the facilities necessary to provide a specific UNE to Covad no longer exist in BellSouth's network. The availability of network elements and services, such as the high frequency portion of the loop that Covad wants, is addressed in Attachment 2 of the Agreement.

Attachment 7, section 1.8.3 demonstrates that section 1.8.1 is not applicable to the scenario at hand. Section 1.8.3 provides that "[i]n the case of such discontinuance, all billed charges, as well as all applicable termination charges, shall become due." Because BellSouth is

not discontinuing service to Covad, but rather is replacing network facilities, it is not asserting a claim for termination charges. Were BellSouth discontinuing service to Covad under section 1.8.3, termination charges would be applicable.

BellSouth further states that Section 1.2.1 of Attachment 2 does not mean that BellSouth is barred from retiring copper facilities. Rather, this section means that for those network elements or services Covad purchases from BellSouth, BellSouth may not impose restrictions that would impair Covad's ability to offer telecommunications services using those elements. It does not, however, obligate BellSouth to create network elements that do not exist (i.e. copper loops where only fiber exists), or to maintain facilities that would otherwise be retired. This restriction applies only to network elements that exist – in this case, the copper loop will no longer exist, and thus the restriction is inapplicable. Moreover, even if the section were applicable, Covad is not "impaired" by the copper retirement given the multitude of options it has to provide service to its end users.

12. BellSouth denies the allegations in Paragraph 12 of the Complaint for the reasons set forth in Paragraph 11 of the Answer.

13. BellSouth denies the allegations in Paragraph 13 of the Complaint. BellSouth has followed the requirements of the Agreement and its own network deployment directives when it made the decision to upgrade its copper plant. Moreover, even if the Commission construed the Agreement to require BellSouth to maintain Covad's end users, BellSouth has presented Covad with numerous viable alternatives to line sharing by which Covad can serve these customers.

14. BellSouth denies the allegations in Paragraph 14 of the Complaint. While BellSouth is replacing copper plant, Covad customers need not "permanently lose service" for the reasons set forth in Paragraph 1 of the Answer. Moreover, BellSouth has not "admitted" that

the Agreement bars BellSouth from replacing copper plant; rather, BellSouth stated, as is the case, that the Agreement does not explicitly address the subject of the removal of copper facilities. BellSouth further explained in its interrogatory response that the Agreement does not need to explicitly address copper retirement because neither the Act nor the FCC rules “have ever imposed a blanket prohibition on BellSouth’s ability to retire copper loops and subloops.” The FCC recently confirmed BellSouth’s right to retire its copper plant in the *Triennial Review Order*. *TRO*, at 271 (FCC “decline[s] to prohibit incumbent LECs from retiring copper loops or copper subloops that they have replaced with fiber. Instead, we reiterate that our Section 251(c)(5) network modification disclosure requirements...apply to the retirement of copper loops and copper subloops”).

15. BellSouth admits the first two sentences of Paragraph 15 of the Complaint. BellSouth denies the remaining allegations, and further states that BellSouth has the right to retire its copper plant under the Agreement, the Act and the FCC rules, and further states that Covad has multiple options with which it can continue to maintain service to its customers other than line sharing. *See e.g. Triennial Review Order*, at ¶ 258 (“we conclude that the increased operational and economic costs of a stand-alone loop (including costs associated with the development of marketing, billing, and customer care infrastructure) are offset by the increased revenue opportunities afforded by the whole loop”).

16. BellSouth denies the allegations in Paragraph 16 of the Complaint.

17. BellSouth denies that the Commission should take immediate action on this Complaint.

First Claim for Relief

18. BellSouth hereby incorporates its responses to Paragraphs 1-18 as if fully set forth herein. BellSouth admits the accuracy of Exhibit C although BellSouth disputes the meaning of the attached provisions.

19. BellSouth admits that Covad accurately cited the Agreement in Paragraph 19 of the Complaint. BellSouth denies that the cited passages are relevant to this dispute.

20. BellSouth admits that Covad accurately cited the Agreement in Paragraph 20 of the Complaint. BellSouth denies that the cited passage is relevant to this dispute.

21. BellSouth admits that Covad accurately cited the Agreement in Paragraph 21 of the Complaint. BellSouth denies that the cited passage is relevant to this dispute, and denies the remaining allegations in Paragraph 21.

22. BellSouth admits that Covad has paid for the line sharing services at issue, and does not assert in this proceeding that Covad has breached the Agreement. At this time BellSouth can neither admit nor deny the remaining allegations in Paragraph 22 of the Complaint.

23. BellSouth denies the allegations set forth in Paragraph 23.

24. BellSouth denies the allegations set forth in Paragraph 23. BellSouth further denies that Covad is entitled to any relief in this matter and respectfully requests that the Commission deny this Complaint.

Second Claim For Relief

25. BellSouth hereby incorporates its responses to Paragraphs 1-25 as if fully set forth herein.

26. BellSouth admits the allegations set forth in Paragraph 26 of the Complaint.

27. BellSouth admits the allegations set forth in Paragraph 27 of the Complaint.

28. BellSouth admits it is obligated to remain in compliance with § 271, but denies the remaining allegations in Paragraph 28.

29. BellSouth denies the allegations set forth in Paragraph 29. BellSouth further states that by replacing its copper plant, BellSouth is *not* denying Covad access to the local loop. Covad may purchase the fiber loop from BellSouth just as it could purchase the copper loop. What Covad wants, however, is line sharing and line sharing is not required under Section 251, and thus is not required under Section 271. Moreover, alleged violations of Section 271 should be pressed before the FCC, not before this Commission. Furthermore, where the obligations imposed by Section 271 overlap with the unbundling obligations the FCC has imposed pursuant to Section 251 (such as loops and switching), the obligations of Section 251 govern. Thus, because BellSouth is not obligated to unbundle line sharing pursuant to Section 251, it has no such obligation pursuant to Section 271. Finally, BellSouth only is obligated to provide line sharing during the transition where facilities are available. In this case, the copper will no longer be available and thus the line sharing element will no longer be available.

30. BellSouth denies the allegations set forth in Paragraph 30 of the Complaint. BellSouth further denies that Covad is entitled to any relief in this matter and respectfully requests that the Commission deny this Complaint.

Third Claim For Relief

31. BellSouth hereby incorporates its responses to Paragraphs 1-31 as if fully set forth herein.

32. BellSouth admits that Covad correctly cited the Act. BellSouth denies that Section 251(c)(3) is relevant to this dispute.

33. BellSouth denies the allegations set forth in Paragraph 33 of the Complaint. BellSouth further states that BellSouth is not obligated to provide network elements or services where facilities do not exist as in the case where there is no copper plant.

34. BellSouth denies the allegations set forth in Paragraph 34 of the Complaint. BellSouth further denies that Covad is entitled to any relief in this matter and respectfully requests that the Commission deny this Complaint. BellSouth further denies that the Commission needs to open any further proceedings on this issue.

Fourth Claim For Relief

35. BellSouth hereby incorporates its responses to Paragraphs 1-35 as if fully set forth herein.

36. BellSouth admits that Covad correctly cited Section 364.01(3), but denies that this statute is relevant to this dispute. The statute deals with growth in the telecommunications market – it does not address the broadband services Covad provides. As the FCC has recently found, competition in the broadband market is flourishing and ALECs are not impaired without access to line sharing. BellSouth denies the remaining allegations in Paragraph 37 of the Complaint.

37. BellSouth admits that Covad correctly cited Section 364.01, but denies that this statute is relevant to this dispute. The statute deals with growth in the telecommunications market – it does not address the broadband services Covad provides. As the FCC has recently found, competition in the broadband market is flourishing and ALECs are not impaired without access to line sharing. BellSouth denies the remaining allegations in Paragraph 37 of the Complaint.

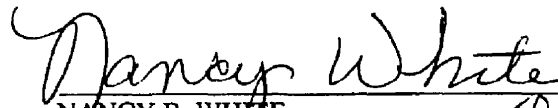
38. BellSouth denies the allegations set forth in Paragraph 34 of the Complaint. BellSouth further denies that Covad is entitled to any relief in this matter and respectfully requests that the Commission deny this Complaint. BellSouth further denies that the Commission needs to open any further proceedings on this issue.

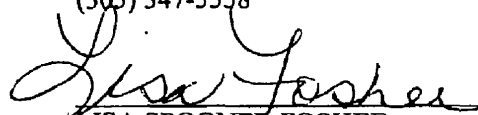
Request for Relief

39. BellSouth denies that Covad is entitled to any relief in this matter and respectfully requests that the Commission deny this Complaint. BellSouth further denies that the Commission needs to open any further proceedings on this issue.

Respectfully submitted this 16th day of October, 2003.

BELLSOUTH TELECOMMUNICATIONS, INC.


NANCY B. WHITE (BSS)
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