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December 4, 2003

**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.: 030945-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:

- ▶ DIECA Communications, Inc., d/b/a Covad Communications Company's Request for Official Recognition.

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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COMMISSION  
CLERK

VGK/bae  
Enclosure

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*Man*  
FPSC-BUREAU OF RECORDS

MCWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, KAUFMAN & ARNOLD, P.A.

DOCUMENT NUMBER  
12455 DEC -4 8  
FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: 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.

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Docket No: 030945-TP

Filed: December 4, 2003

**DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS COMPANY'S REQUEST FOR OFFICIAL RECOGNITION**

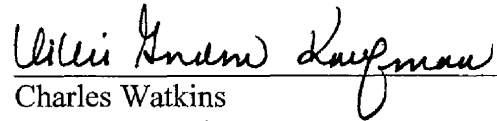
DIECA Communications Company, Inc. d/b/a Covad Communications Company (Covad), pursuant to §§ 120.569(2)(i), 90.202 and 90.203, Florida Statutes, files this Request for Official Recognition of its Interconnection Agreement with BellSouth Telecommunications, Inc. (BellSouth), approved by the Commission in Order No. PSC-02-0252-FOF-TP in Docket No. 001797-TP. Covad particularly requests official recognition of the entire force majeure clause contained in § 14.1 of the Agreement which is attached as Attachment 1. The Order and Agreement are appropriate for Official Recognition as approval of the Agreement represents an official action of this agency which is cognizable pursuant to §90.202(5), Florida Statutes.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

WHEREFORE, Covad requests that the Commission officially recognize the Interconnection Agreement between Covad and BellSouth, and particularly the force majeure clause contained in § 14.1 of the Agreement.



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Covad Communications Co.  
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Attorneys for Covad Communications, Inc.

existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

13.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

13.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

13.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

13.5 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

#### 14. Force Majeure

14.1 In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. BellSouth understands that its obligation to

provide Covad with nondiscriminatory access to unbundled network elements is not altered by a work stoppage, strike or other labor problem.

**15. Adoption of Agreements**

BellSouth shall make available without unreasonable delay to Covad any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms and conditions as those provided in the agreement. If BellSouth believes that it is no longer reasonable to allow Covad to opt into a particular agreement because of changes in technology or pricing or for any other reason, BellSouth may petition the Commission requesting that Covad not be allowed to opt-in.

**16. Modification of Agreement**

16.1 If Covad changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of Covad to notify BellSouth of said change and request that an amendment to this Agreement, if necessary, be executed to reflect said change.

16.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

16.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Covad or BellSouth to perform any material terms of this Agreement, Covad or BellSouth may, on thirty (30) days' written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

16.4 Notwithstanding anything to the contrary in this Agreement, this Agreement shall not be amended or modified after the expiration date hereof as set forth in Section 2 above.

**17. Non-waiver of Legal Rights**

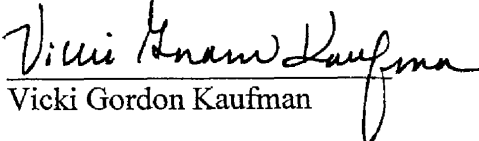
Execution of this Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Request for Official Recognition has been provided by (\*) hand delivery or U.S. Mail this 4<sup>th</sup> day of December 2003, to the following:

(\*) Roseanne Gervasi  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

(\*) Nancy White  
c/o Nancy Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, Florida 32301-1556

  
Vicki Gordon Kaufman