

ORIGINAL

Matilda Sanders

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Sent: Monday, July 26, 2004 2:13 PM

To: Fillings@psc.state.fl.us

Cc: Fatool, Vicki; Peters, Evelyn; Linda Hobbs; Nancy Sims; Holland, Robyn P; Bixler, Micheale; Slaughter, Brenda; Mays, Meredith

Subject: Docket No. 040601-TP BellSouth's Motion for Summary Disposition and Expedited Relief

a. Lynn Barclay
Legal Secretary to Meredith E. Mays
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b. Docket No. 040601-TP (Covid Petition)

c. BellSouth Telecommunications, Inc.

on behalf of Meredith E. Mays

d. 6 pages total (including attachment)

e. BellSouth Telecommunications, Inc.'s Motion for Summary Disposition and Expedited Relief

<<040601 motion for summary.pdf>>

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Legal Department

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July 26, 2004

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
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2540 Shumard Oak Boulevard
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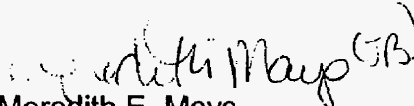
Re: Docket No. 040601-TP

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Motion for Summary Disposition and Expedited Relief, 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,


Meredith E. Mays

Enclosures

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

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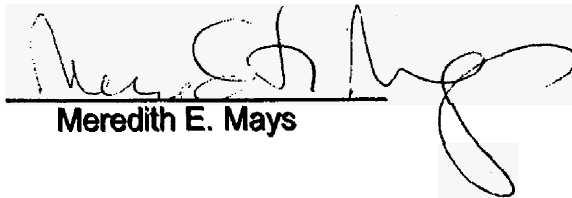
**CERTIFICATE OF SERVICE
Docket No. 040601-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and Federal Express this 26th day of July, 2004 to the following:

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Meredith E. Mays

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of DIECA Communications, Inc.,)
d/b/a Covad Communications Company,) Docket No.: 040601-TP
for Arbitration of Interconnection Agreement)
Amendment with BellSouth Telecommunications,) Filed: July 26, 2004
Inc. pursuant to Section 252(b) of the)
Telecommunications Act of 1996)

**BELLSOUTH'S MOTION FOR
SUMMARY DISPOSITION AND EXPEDITED RELIEF**

BACKGROUND

BellSouth Telecommunications, Inc. ("BellSouth"), through its undersigned counsel, submits this Motion for Summary Disposition and Expedited Relief. This case is ideal for an expedited, summary disposition on a paper record without a hearing. The issues before the Commission are straightforward – Covad initiated this docket on June 23, 2004, invoking this Commission's jurisdiction pursuant to Sections 12 and 16 of the parties' Interconnection Agreement ("Agreement"). Sections 12 and 16 of the Agreement address contract modification and dispute resolution and allow either party to seek renegotiation of language within the Agreement when legal action materially affects such terms; in the event the renegotiation effort is unsuccessful, either party may petition this Commission for resolution.

The legal action that gave rise to Covad's petition occurred on August 21, 2003, when the Federal Communication Commission ("FCC") issued its *Triennial Review Order*.¹ In the *Triennial Review Order*, the FCC eliminated many of the unbundling requirements under § 251

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003) ("*Triennial Review Order*" or "TRO"), *reversed in part on other grounds, United States Telecom. Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*").

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of the 1996 Act. While certain portions of the *Triennial Review Order* were reversed on March 2, 2004 by the United States Court of Appeals, for the District of Columbia Circuit, other findings of the FCC, including its conclusions concerning line sharing, were upheld.²

BellSouth responded to Covad's petition on July 19, 2004, requesting that this Commission address this as a petition for dispute resolution rather than as a petition for arbitration ("Response"). The issues before the Commission present legal questions, and no hearing is required to resolve this matter, which can and should be addressed efficiently and expeditiously.

DISCUSSION

Both parties acknowledge that expedited treatment of this matter is appropriate. *See* Covad's Petition, p. 5, ¶ 3; *and* BellSouth's Response, p. 6.³ The rules enacted pursuant to *Triennial Review Order* became effective on October 2, 2003. In relevant part, 47 C.F.R. § 51.319(a)(i)(B) allows Covad to continue adding new line sharing customers until October 2, 2004. The federal rules also detail the rates applicable to line sharing and further provide that as of October 6, 2006, an ILEC "is no longer required to provide a requesting telecommunications carrier with the ability to engage in line sharing" 47 C.F.R. § 51.319(a)(i)(B).

Without an immediate modification to the parties' Agreement, however, Covad may maintain that it has no limitation on its ability to continue adding new line sharing customers after the FCC-imposed October 2, 2004 cutoff. Likewise, without an immediate modification to

² *USTA II*, 359 F.3d at 585 ("[w]e therefore uphold the Commission's rules concerning hybrid loops, FTTH, and line sharing on the grounds that the decision not to unbundle these elements was reasonable, even in the face of some CLEC impairment, in light of evidence that unbundling would skew investment incentives in undesirable ways and that intermodal competition from cable ensures the persistence of substantial competition in broadband.").

³ This Commission has established three criteria for expeditious processing of interconnection agreement complaints. *See* Order No. PSC-03-0622-PCO-TP. While this does not meet the three criteria because it involves more than three issues, the dispute is limited to straightforward legal issues. Moreover, there is an immediate need to resolve the line sharing issue prior to October 2, 2004.

the Agreement, Covad can arguably continue to avail itself of rates that provide it with an “irrational cost advantage over competitive LECs purchasing the whole loop and over the incumbent LECs.” *Triennial Review Order*, ¶ 260. Neither of these outcomes is consistent with the *Triennial Review Order*.

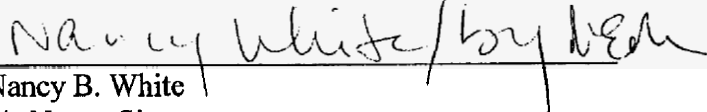
Finally, the parties are currently in the process of negotiating the terms of a replacement interconnection agreement as well as discussing modifications required as a result of the *USTA II* decision. Consequently, a decision that addresses the immediate changes necessary as a result of the *Triennial Review Order* would provide helpful guidance to the parties in ongoing negotiations.

CONCLUSION

BellSouth respectfully requests that this Commission enter an immediate procedural and scheduling order setting dates for (1) the submission of initial briefs on the merits; (2) the submission of reply briefs and proposed orders; and (3) a full Commission decision. BellSouth has notified counsel for Covad of this motion; as of the time of filing Covad has not notified BellSouth of its position concerning this request. BellSouth also requests inclusion of this motion as a discussion topic during an anticipated August, 2004 telephone conference.

Respectfully submitted this 26th day of July, 2004.

BELLSOUTH TELECOMMUNICATIONS, INC.



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