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July 26, 2004

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**PUBLIC SERVICE
COMMISSION**

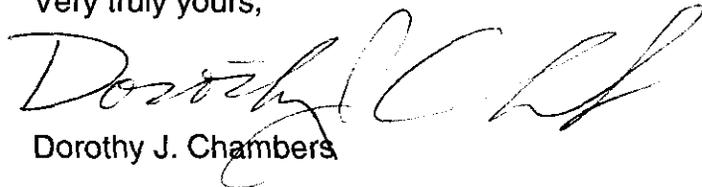
Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, KY 40602

Re: Petition of DIECA Communications, Inc. d/b/a Covad Communications
Company for Arbitration of Interconnection Agreement Amendment with
BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the
Telecommunications Act of 1996
PSC 2004-00259

Dear Ms. O'Donnell:

Enclosed for filing in the above-captioned case are the original and ten (10)
copies of BellSouth's Request for Summary Disposition.

Very truly yours,



Dorothy J. Chambers

Enclosure

cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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JUL 27 2004

PETITION OF DIECA COMMUNICATIONS, INC.,)
D/B/A COVAD COMMUNICATIONS COMPANY)
FOR ARBITRATION OF INTERCONNECTION)
AGREEMENT AMENDMENT WITH BELLSOUTH)
TELECOMMUNICATIONS, INC. PURSUANT TO)
SECTION 252(B) OF THE TELECOMMUNICATIONS)
ACT OF 1996)

PUBLIC SERVICE
COMMISSION

CASE NO. 2004-00259

BELLSOUTH'S REQUEST FOR SUMMARY DISPOSITION

BACKGROUND

BellSouth Telecommunications, Inc. ("BellSouth"), through its undersigned counsel, submits this Request for Summary Disposition. BellSouth has notified counsel for DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") of this motion but has not yet been advised of Covad's position regarding summary disposition.

BellSouth believes 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 of the 1996 Act. While certain portions of the *Triennial Review Order* were reversed on March 2, 2004 by the United States District Court of Appeals, 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"). By Order dated July 23, 2004, the Commission scheduled an informal conference on August 17, 2004. 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 appear to acknowledge that expedited treatment of this matter is appropriate – in petitions filed in other BellSouth states, Covad requested expedited relief, and BellSouth acknowledged expedited relief was appropriate in its Response. 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

¹ Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) ("Triennial Review Order" or "TRO"), reversed in part on other grounds, *United States Telecom. Ass'n v. FCC*, Nos. 00-1012, et al. (D.C. Cir. Mar. 2, 2004) ("USTA II").

² *United States Telecom. Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. Mar. 2, 2004).

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 October 2, 2004 cutoff. Likewise, without an immediate modification to 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 has no objection to participating in an informal conference, if that is the Commission’s pleasure. However, since this proceeding presents legal issues best addressed in briefs, BellSouth respectfully requests that this Commission enter a scheduling order setting dates for (1) the submission of initial briefs on the merits; and (2) the submission of reply briefs and proposed orders. Setting briefing dates will allow this matter to be presented to the Commission in an expeditious and efficient manner and well in advance of the October 2, 2004, deadline noted above with respect to the line sharing rules.

Respectfully submitted this 26th day of July, 2004.



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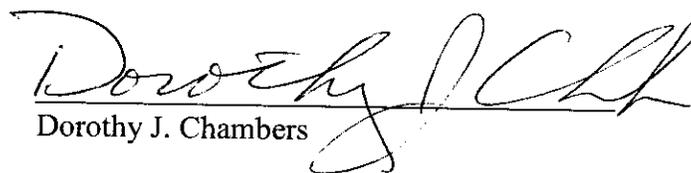
CERTIFICATE OF SERVICE

This is to certify that on this 26th day of July, 2004, I served a copy of the within and foregoing, upon known parties of record, via electronic mail as follows:

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