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BEFORE THE PUBLIC SERVICE COMMISSION SEP 29 2003

PUBLIC SERVICE
COMMISSION

DIECA COMMUNICATIONS, INC., d/b/a)
COVAD COMMUNICATIONS COMPANY)
Complainant,)
v.)
BELLSOUTH TELECOMMUNICATIONS,)
INC.)
Respondent.)

Case No. 2003-00873

**COMPLAINT FOR ANTICIPATORY BREACH OF THE PARTIES'
INTERCONNECTION AGREEMENT AND VIOLATIONS OF SECTIONS 271 AND 251
OF THE TELECOMMUNICATIONS ACT OF 1996**

In its Order¹ concluding the investigation into whether BellSouth should be granted interLATA authority in Kentucky, the Commission acknowledged concerns about BellSouth policies which have "the effect of chilling local competition for advanced services."² Noting how BellSouth intended to extend those policies to the services it would provide over the fiber-fed, "next generation" digital loop carrier architecture, the Commission advised BellSouth of its plans to continue reviewing this "quintessential" issue and actively pursuing a policy that promotes the statewide deployment of advanced services while *offering CLECs a reasonable opportunity to compete.*³ In its Order the Commission noted how BellSouth's line sharing policy

¹ *Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Case No. 2001-00105 (April 26, 2002) (the "271 Review").

² *Id.*, p. 13.

³ *Id.*, p. 14 (emphasis added).

might raise issues of competitive discrimination in the future.⁴ The Commission's concerns were informed by the knowledge that BellSouth is the largest DSL provider in Kentucky and by the fact that BellSouth competes against both CLECs and Internet Service Providers ("ISP").⁵ In the 271 Review case the Commission stated its intent to "continue closely to monitor BellSouth" and the DSL market.⁶ This formal complaint, filed because BellSouth has explicitly refused to provide service required under contract with Covad, demonstrates how the Commission's concerns about BellSouth were well-founded.

DIECA Communications Inc., d/b/a Covad Communications Company ("Covad"), by and through its undersigned attorneys, and pursuant to KRS 278.260(1) and 807 KAR 5:001 Section 15(2), states the following in support of its Complaint against BellSouth Telecommunications, Inc. ("BellSouth"):

PARTIES

1. Complainant Covad is a telecommunications carrier, as defined by 47 U.S.C. § 153(44), headquartered at 3420 Central Expressway, Santa Clara, California 95051 and with a regional office at 1230 Peachtree Street, N.E., 19th Floor, Atlanta, GA 30309. Covad is a utility within the meaning of KRS 278.010(3)(e) and is authorized to provide service in the Commonwealth of Kentucky.

2. Respondent BellSouth is a utility within the meaning of KRS 278.010(3)(e) and is an incumbent local exchange carrier and a Regional Bell Operating Company ("RBOC"), as defined by 47 U.S.C. § 251(h)(1) and 47 U.S.C. § 153(4), respectively, with offices located at 601 West Chestnut Street, Louisville, KY 40203.

⁴ *Id.*, p. 25.

⁵ *See Id.*, pp. 25, 41.

⁶ *Id.*

3. All filings and orders related to this proceeding should be provided to:

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JURISDICTION

4. The Commission has jurisdiction to hear this matter pursuant to KRS 278.040, 47 U.S.C. § 252(e)(3), and 47 U.S.C. § 253 (b).

GENERAL ALLEGATIONS

5. Covad provides broadband telecommunications services to customers within the state of Kentucky using a combination of its own facilities, such as digital transmission and switching equipment, and essential facilities leased from BellSouth, such as copper loops. Covad's customers consist of two types. The first type includes Internet Service Providers ("ISPs") who combine Covad DSL service with Internet functionalities then provide service directly to end users. The second type includes end users who obtain directly from Covad DSL service combined with Internet access. BellSouth, either directly or through corporate affiliates, competes against ISPs and Covad, *e.g.*, through sale of its "FastAccess" Internet service.

6. Covad has executed an Interconnection Agreement, dated December 19, 2001, with BellSouth (collectively Covad and BellSouth are referred to as the "Parties") that details the Parties' responsibilities to interconnect with each other and otherwise comply with their obligations under the Telecommunications Act of 1996, Federal Communications Commission

("FCC") rules and the rules and orders of this Commission. A copy of the Parties' Interconnection Agreement, with any amendments is on file with the Commission.⁷ There is presently a dispute under this agreement. Pursuant to Section 12 of the agreement, either party may petition the Commission for resolution of the dispute.

7. Under section 2.11.1 of the Parties' Interconnection Agreement, "BellSouth shall provide Covad access to the high frequency portion of the local loop as an unbundled network element." See Interconnection Agreement By and Between BellSouth Telecommunications, Inc. and DIECA Communications, Inc. d/b/a Covad Communications Company ("Agreement") at section 2.11.1, p. 89.⁸ Under Section 2.11.1.2, of the Interconnection Agreement, the Parties recognized that "[t]hat following loop requirements are necessary for Covad to be able to access the High Frequency spectrum: an unconditioned, 2-wire copper loop." Under the terms of the Parties Interconnection Agreement, Covad ordered loops or portions of loops, from BellSouth, for use in serving various Covad customers. The loops currently relevant to this dispute are identified in the two tables set forth below:

⁷ The December 19, 2001 Interconnection Agreement, including a ministerial amendment executed by the parties in December 2002 and January 2003, is posted on the Commission's public website at: http://162.114.3.165/PSCICA/1998/1998-257/00029-AM_012303.pdf. There has been an additional amendment during 2003 (also not relevant to this dispute) which is posted at: http://162.114.3.165/PSCICA/1998/1998-257/00269-AM_062603.pdf.

⁸ Section 2.11 of the Interconnection Agreement and other sections and attachments to the Interconnection Agreement referenced in this Complaint are attached as Exhibit A.

Table 1 - SDSL

CIRCUIT ID	CITY, ST	BELLSOUTH NOTICE	PROPOSED CHANGE DATE
50.SWXX.501272	Louisville, KY	NDS20030054	4 th Otr. 2003
K1.LXFU.500625	Louisville, KY	ND20030167	May 1, 2004
K1.LXFU.500296	Louisville, KY	ND20030167	May 1, 2004
K1.LXFU.500413	Louisville, KY	ND20030167	May 1, 2004
K1.LXFU.500443	Louisville, KY	ND20030167	May 1, 2004
K1.LXFU.500711	Louisville, KY	ND20030167	May 1, 2004

Table 2 – Service Provisioned via Line Sharing

POTS NUMBER	CITY, ST	BELLSOUTH NOTICE	PROPOSED CHANGE DATE
502.429.	Louisville, KY	ND20030167	May 1, 2004
502.429.	Louisville, KY	ND20030167	May 1, 2004
502.326.	Louisville, KY	ND20030167	May 1, 2004
502.412.	Louisville, KY	ND20030167	May 1, 2004
502.339.	Louisville, KY	ND20030167	May 1, 2004
502.412.	Louisville, KY	ND20030167	May 1, 2004
502.339.	Louisville, KY	ND20030167	May 1, 2004
502.327.	Louisville, KY	ND20030167	May 1, 2004
502.426.	Louisville, KY	ND20030167	May 1, 2004
502.425.	Louisville, KY	ND20030167	May 1, 2004
502.429.	Louisville, KY	ND20030167	May 1, 2004

8. As “line-shared” loops are identified by a telephone number assigned to the end user premises associated with the line, Table 2 has been redacted so as not to disclose information which might identify a specific end user of Covad or of a Covad customer.

9. At all relevant times, Covad has provided BellSouth with timely payment for the loops or portions of loops it uses to serve Kentucky customers, and complied with all relevant portions of the Parties’ Interconnection Agreement.

10. Covad’s Interconnection Agreement with BellSouth obligates BellSouth to maintain the service provisioned to Covad’s customers. Agreement, Attachment 7, section 1.8

(setting out the circumstances under which BellSouth may discontinue service to Covad). Indeed, the Parties' Agreement also provides that "BellSouth shall not impose limitation restrictions or requirements or requests for the use of the network elements or combinations that would impair the ability of Covad to offer telecommunications service in the manner Covad intends." Agreement, Attachment 2, Network Elements and Other Services, section 1.2.1.

11. Discontinuance of service to Covad is specifically addressed in the Parties' Interconnection Agreement in Attachment 7, section 1.8, entitled "Discontinuing Service to Covad." Under the terms of the Agreement, BellSouth may discontinue service to Covad "for non-payment or in the event of prohibited, unlawful or improper use of BellSouth facilities or service. . ." Attachment 7, section 1.8.1. However, Covad has not contracted to have its service discontinued as a result of BellSouth's unilateral decision to change its network. Id. This should come as no surprise, because to have done so would have the effect of subjecting Covad's own customers to disconnection through no fault of their own or Covad. Covad customers disconnected through unilateral action by BellSouth would have little alternative but to turn to BellSouth for the services previously provided by Covad.

12. Although BellSouth has been replacing copper cable with fiber optics for years, BellSouth did not ask for or obtain the contractual right to cut-off service to Covad or Covad's customers during its selective conversion of some facilities to fiber.

13. At no time have any of the customers at issue or Covad violated any of the provisions of Attachment 7, section 1.8 which would entitle BellSouth to discontinue service to Covad or its customers.

14. Nevertheless, BellSouth has notified Covad that BellSouth intends on removing a portion of the copper loop between end-user premises and the central office such that Covad's

customer will permanently lose service from Covad.

15. BellSouth has admitted in response to interrogatories filed in Docket No. P-55, Sub 1457 before the North Carolina Utilities Commission that there is no provision within the Parties' Interconnection Agreement authorizing BellSouth to discontinue service to a Covad customer by changing its network. See Response of BellSouth Telecommunications, Inc. to Covad's First Data Requests, North Carolina Utilities Commission, Docket No. P-55, Sub 1457, filed August 18, 2003, Item No. 19. This response is attached as Exhibit B.

16. BellSouth asserts that the Federal Communications Commission ("FCC") provides it the right to install fiber and retire copper subloops within the BellSouth network. Covad does not take issue with this assertion. However, neither the FCC, the Telecommunications Act of 1996 nor the Parties' Interconnection Agreement provide BellSouth the right to discontinue existing service to a Covad customer in connection with network modifications.

17. The FCC explicitly left to the states the role of developing rules for copper retirement and its potential impact on service to competitive carriers' customers. Specifically, the FCC stressed that "we are not preempting the ability of any state commission to evaluate an incumbent LEC's retirement of its copper loops to ensure such retirement complies with any applicable state legal or regulatory requirements."⁹

18. In negotiations with BellSouth, BellSouth explicitly refused to continue the service provisioned to Covad's customers by BellSouth under the terms of the Parties' Interconnection Agreement.

⁹ *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, FCC 03-36, Released August 21, 2003, ("Triennial Review Order") ¶ 284, p. 171.

19. Covad expects the customers associated with the circuits identified in paragraph 7 to lose their service beginning during the fourth quarter of this year.

FIRST CLAIM FOR RELIEF

(Violation of Section 2, Attachment 2, Sections 1.2.1 and 2.1.4 and Attachment 7, Section 1.8 of the Parties' Interconnection Agreement)

20. Covad hereby incorporates each and every preceding paragraph of this Complaint into this claim for relief. A copy of the relevant provisions of the parties' interconnection agreement is attached hereto as Exhibit A. On December 19, 2001, the Parties executed an Interconnection Agreement pursuant to the requirements of Section 252 of the Telecommunications Act of 1996, containing the following terms:

a. Section 2 of the Parties' Interconnection Agreement provides that, "BellSouth will provide Covad with the functionalities of unbundled network elements so that Covad can provide any telecommunications service that can be offered by means of the unbundled elements as described in Attachment 2."

b. Attachment 2, Section 1.2.1 of the Parties' Interconnection Agreement provides that, "Except as otherwise required by law, BellSouth shall not impose limitation restrictions or requirements or requests for the use of the network elements or combinations that would impair the ability of Covad to offer telecommunications service in the manner Covad intends."

c. Attachment 2, Section 2.1.4 of the Parties' Interconnection Agreement provides, in relevant part, that, "BellSouth will only provision, maintain and repair loops to the standards that are consistent with the type of loop ordered."

d. Attachment 7, Section 1.8 and 1.8.1 of the Parties' Interconnection Agreement provide that, "Discontinuing Service to Covad. The procedures for discontinuing service to

Covad are as follows: 1.8.1 BellSouth reserves the right to suspend or terminate service for nonpayment of services or in the event of prohibited, unlawful or improper use of BellSouth facilities or service or any other violation or noncompliance by Covad of the rules and regulations contained in BellSouth's tariffs." Modification to BellSouth's network is not identified in the Parties' Interconnection Agreement as a basis for BellSouth to discontinue service to Covad or its customers.

e. At all relevant times, Covad has performed in accordance with all material terms of the Parties' Interconnection Agreement.

22. BellSouth's stated intention to discontinue service to Covad and its customers as set forth herein will result in a breach of the Parties' Interconnection Agreement, including, but not limited to, Section 2, Attachment 2, Sections 1.2.1 and 2.1.4 and Attachment 7, Section 1.8. In addition, disconnection of service by BellSouth would have irreparable harmful effect -- customers currently served by Covad or Covad's ISP customers would be forced to turn to BellSouth for substitute services. The Commission has statutory authority to investigate this claim of inadequate service. KRS 278.260(1).

23. Accordingly, Covad respectfully requests that the Commission: 1) order that BellSouth may not discontinue service to Covad or its customers in derogation of the Parties' Interconnection Agreement until further order of the Commission; and 2) issue an order for BellSouth to satisfy or answer this complaint.

SECOND CLAIM FOR RELIEF

(Anticipatory Violation of 47 U.S.C. § 271(c)(2)(B)(ii) and (iv) – The Competitive Checklist)

24. Covad hereby incorporates each and every preceding paragraph of this Complaint into this claim for relief.

25. 47 U.S.C. § 271(c)(2)(B)(ii) ("Checklist Item 2") requires RBOCs, including BellSouth, seeking authority to provide interLATA service to provide non-discriminatory access to network elements in accordance with 47 U.S.C. §§ 251(c)(3) and 252(d).

26. 47 U.S.C. § 271(c)(2)(B)(iv) ("Checklist Item 4") requires RBOCs seeking authority to provide interLATA service to provide local loop transmission from the central office to the customer's premises, unbundled from local switching or other services. The FCC has clarified that compliance with Checklist Item 4 requires providing access to digital capable loops on a non-discriminatory basis.

27. RBOCs that have obtained approval to offer interLATA services, such as BellSouth, are obligated to remain in compliance with all Checklist Items after approval of their applications. Noncompliance, or "backsliding," may be punished by the FCC pursuant to 47 U.S.C. § 271(d)(6). While ultimate enforcement of § 271 violations lies with the FCC, this Commission plays an important role in ensuring § 271 compliance.

28. If BellSouth carries through on its promise to discontinue service to Covad and its customers, BellSouth will cease to comply with Checklist Items 2 and 4 by intentionally violating 47 U.S.C. § 251(c)(3). The Commission has clear authority to order BellSouth to comply with the Competitive Checklist. Should BellSouth disobey such a Commission order, the Commission can refer the matter to the FCC for enforcement pursuant to 47 U.S.C. § 271(d)(6).

29. Accordingly, Covad respectfully requests that the Commission: 1) order that BellSouth may not discontinue service to Covad or its customers in derogation of the Parties'

Interconnection Agreement until further order of the Commission; and 2) issue an order for BellSouth to satisfy or answer this complaint.

THIRD CLAIM FOR RELIEF

(Anticipatory Violation of Section 251(c)(3) of the Telecommunications Act of 1996)

30. Covad hereby incorporates each and every preceding paragraph of this Complaint into this claim for relief.

47 U.S.C. § 251(c)(3) states:

(3) Unbundled access

[incumbent local exchange carriers have] [t]he duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

31. If BellSouth unilaterally discontinues service to Covad and its customers in violation of the Parties' Interconnection Agreement, then BellSouth will violate 47 U.S.C. § 251(c)(3) by refusing to provide unbundled access to network elements on rates, terms and conditions that are just, reasonable and non-discriminatory.

32. Accordingly, Covad respectfully requests that the Commission: 1) order that BellSouth may not discontinue service to Covad or its customers in derogation of the Parties'

Interconnection Agreement until further order of the Commission; and 2) issue an order for BellSouth to satisfy or answer this complaint.

REQUEST FOR RELIEF

33. For the reasons stated, Covad applies for:

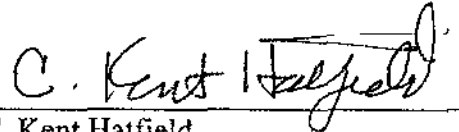
a. An Order that BellSouth may not discontinue service to Covad or its customers in derogation of the Parties' Interconnection Agreement;

b. an Order precluding BellSouth from discontinuing service to Covad or its customers through any network change until further order of the Commission; and

c. any other relief that the Commission deems just and appropriate.

Dated this 26th day of September, 2003.

Respectfully submitted,

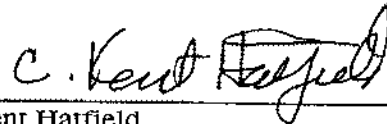


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CERTIFICATE OF SERVICE

A copy of the foregoing was served this 26th day of September, 2003, by first class, United States mail, postage prepaid, upon the party listed below.



C. Kent Hatfield

Honorable Dorothy Chambers
General Counsel - Kentucky
BellSouth Telecommunications, Inc.
601 West Chestnut Street, Room 407
P. O. Box 32410
Louisville, Kentucky 40232

RECEIVED

SEP 29 2003

PUBLIC SERVICE
COMMISSION

By and Between

BellSouth Telecommunications, Inc.

And

DIECA Communications, Inc. d/b/a

Covad Communications Company

AGREEMENT

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, and DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), a Virginia corporation, and shall be deemed effective as of the date of the last signature of both Parties ("Effective Date"). This Agreement may refer to either BellSouth or Covad or both as a "Party" or "Parties."

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, Covad is or seeks to become a competitive local exchange carrier ("CLEC") authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, Covad wishes to purchase unbundled network elements and other services from BellSouth, resell BellSouth's telecommunications services, and/or the Parties wish to interconnect their facilities and exchange traffic pursuant to sections 251 and 252 of the Act.

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and Covad agree as follows:

1. Definitions

Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

Commission is defined as the appropriate regulatory agency in each of BellSouth's nine state region, Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.

Competitive Local Exchange Carrier (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

End User means the ultimate user of the Telecommunications Service.

FCC means the Federal Communication Commission.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telecommunications Act of 1996 ("Act") means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47, U.S.C. Section 1 et. seq.).

2. Purpose

This Agreement sets forth the terms and conditions under which Covad will obtain services and unbundled network elements from BellSouth to provide telecommunications services to Covad customers within the territory of BellSouth. BellSouth will provide Covad with the functionalities of unbundled network elements so that Covad can provide any telecommunications service that can be offered by means of the unbundled elements as described in Attachment 2.

2.1 Term of the Agreement

2.2 The term of this Agreement shall be three years, and shall apply to the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. This Agreement shall become effective on the date the last party executes the Agreement.

2.3 The Parties agree that by no later than one hundred and eighty (180) days prior to the expiration of this Agreement, they shall commence negotiations for a new agreement ("Subsequent Agreement"). If as of the expiration of this Agreement, a Subsequent Agreement has not been executed by the Parties, then except as set forth in Section 2.4.2 below, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration shall be as set forth in Section 2.4 below.

ACCESS TO NETWORK ELEMENTS AND OTHER SERVICES

1. Introduction

- 1.1. This Attachment sets forth the unbundled network elements and combinations of unbundled network elements that BellSouth agrees to offer to Covad in accordance with its obligations under Section 251(c)(3) of the Act. The specific terms and conditions that apply to the unbundled network elements are described below in this Attachment 2. The price for each unbundled network element and combination of unbundled Network Elements are set forth in Exhibit C of this Agreement.
- 1.2. For purposes of this Agreement, "Network Element" is defined to mean a facility or equipment provided by BellSouth on an unbundled basis as is used by the CLEC in the provision of a telecommunications service. These unbundled network elements will be consistent with the requirements of the FCC 319 rule. For purposes of this Agreement, combinations of Network Elements shall be referred to as "Combinations."
 - 1.2.1. Except as otherwise required by law, BellSouth shall not impose limitation restrictions or requirements or requests for the use of the network elements or combinations that would impair the ability of Covad to offer telecommunications service in the manner Covad intends.
 - 1.2.2. Except upon request by Covad, BellSouth shall not separate requested network elements that BellSouth currently combines.
- 1.3. BellSouth shall, upon request of Covad, and to the extent technically feasible, provide to Covad access to its network elements for the provision of Covad's telecommunications service. If no rate is identified in the contract, the rate for the specific service or function will be negotiated by the Parties upon request by either Party.
- 1.4. Covad may purchase network elements and other services from BellSouth for the purpose of combining such network elements in any manner Covad chooses to provide telecommunication services to its intended users, including recreating existing BellSouth services. With the exception of the sub-loop elements which are located outside of the central office, BellSouth shall deliver the network elements purchased by Covad for combining to the designated Covad collocation space. The network elements shall be provided as set forth in this Attachment.
- 1.5. BellSouth shall comply with the requirements as set forth in the technical references within Attachment 2 unless BellSouth's actual performance or applicable industry

2.1.3 The provisioning of service to a CLEC collocation space will require cross-office cabling and cross-connections within the central office to connect the loop to a local switch or to other transmission equipment. These cross-connects are a separate component, that are not considered a part of the loop, and thus have a separate charge.

2.1.4 The Loop shall be provided to Covad in accordance with BellSouth's TR73600 Unbundled Local Loop Technical Specification and applicable industry standard technical references. Covad shall be provided with six months notice of any changes to the existing loop specifications proposed by BellSouth to TR73600 after execution of this Agreement. The 6 months notification will not apply if Industry Standards, or legal or regulatory mandates require a different timeframe, if an applicable regulatory authority or industry forum requires modifications within a shorter time frame, or if otherwise agreed to by Covad and BellSouth.

Covad may utilize the unbundled Loops to provide any telecommunications service it wishes, so long as such serves are consistent with industry standards and BellSouth's TR73600.

BellSouth will only provision, maintain and repair the loops to the standards that are consistent with the type of loop ordered. In those cases where Covad has requested that BellSouth modify a loop so that it no longer meets the technical parameters of the original loop type, the resulting loop will be maintained as an Unbundled Copper Loop (UCL), and Covad shall pay the recurring and non-recurring charges for the resulting UCL.

2.1.5 BellSouth Order Coordination referenced in Attachment 2 includes two types: "Order Coordination" and "Order Coordination - Time Specific."

2.1.6 "Order Coordination" allows BellSouth and Covad to coordinate the installation of the SL2 Loops, Unbundled Digital Loops (UDL) and other Loops where OC may be purchased as an option, to Covad's facilities to limit end user service outage. OC is available when the Loop is provisioned over an existing circuit that is currently providing service to the end user. Order coordination for physical conversions will be scheduled at BellSouth's discretion during normal working hours on the committed due date and Covad advised. OC shall be provided in accordance with the chart set forth below.

2.1.7 "Order Coordination - Time Specific" refers to service order coordination in which Covad requests a specific time for a service order conversion to take place. BellSouth will make every effort to accommodate Covad's specific conversion time request. However, BellSouth reserves the right to negotiate with Covad a conversion time based on load and appointment control when necessary. Loops on a single service

Modification process or the Special Construction process, as applicable, to obtain the loop type ordered.

2.11 High Frequency Spectrum Network Element

2.11.1 BellSouth shall provide Covad access to the high frequency portion of the local loop as an unbundled network element ("High Frequency Spectrum") at the rates set forth in Exhibit C. BellSouth shall provide Covad with the High Frequency Spectrum irrespective of whether BellSouth chooses to offer xDSL services on the loop.

2.11.1.1 The High Frequency Spectrum is defined as the frequency range above the voiceband on a copper loop facility carrying analog circuit-switched voiceband transmissions. Access to the High Frequency Spectrum is intended to allow Covad the ability to provide Digital Subscriber Line ("xDSL") data services to the end user for which BellSouth provides voice services. The High Frequency Spectrum shall be available for any version of xDSL presumed acceptable for deployment pursuant to 47 C.F.R. Section 51.230, including, but not limited to, ADSL, RADSL, and any other xDSL technology that is presumed to be acceptable for deployment pursuant to FCC rules. BellSouth will continue to have access to the low frequency portion of the loop spectrum (from 300 Hertz to at least 3000 Hertz, and potentially up to 3400 Hertz, depending on equipment and facilities) for the purposes of providing voice service. Covad shall only use xDSL technology that is within the PSD mask parameters set forth in T1.413 or other applicable industry standards. Covad shall provision xDSL service on the High Frequency Spectrum in accordance with the applicable Technical Specifications and Standards.

2.11.1.2 The following loop requirements are necessary for Covad to be able to access the High Frequency Spectrum: an unconditioned, 2-wire copper loop. An unconditioned loop is a copper loop with no load coils, low-pass filters, range extenders, DAMLs, or similar devices and minimal bridged taps consistent with ANSI T1.413 and T1.601. The process of removing such devices is called "conditioning." BellSouth shall charge and Covad shall pay as interim rates, the same rates that BellSouth charges for conditioning stand alone loops as provided in this Interconnection Agreement (e.g., unbundled copper loops, ADSL loops, and HDSL loops) until permanent pricing for loop conditioning are established either by mutual agreement or by a state public utilities commission. The interim costs for conditioning are subject to true up as provided in this agreement. BellSouth will condition loops to enable Covad to provide xDSL-based services on the same loops the incumbent is providing analog voice service, regardless of loop length. BellSouth is not required to condition a loop in connection with Covad's access to the High Frequency Spectrum if conditioning of that loop impairs service from the end users perspective. If Covad requests that BellSouth condition a loop longer than 18,000 ft. and such conditioning significantly

degrades the voice services on the loop, Covad shall pay for the loop to be restored to its original state.

2.11.1.3 Covad's termination point is the point of termination for Covad's on the toll main distributing frame in the central office ("Termination Point"). BellSouth will use jumpers to connect Covad's connecting block to the splitter. The splitter will route the High Frequency Spectrum on the circuit to the Covad's xDSL equipment in the Covad's collocation space.

2.11.1.4 For the purposes of testing line shared loops, Covad shall have access to the test access point associated with the splitter and the demarcation point between BellSouth's network and Covad's network.

2.11.2 PROVISIONING OF HIGH FREQUENCY SPECTRUM AND SPLITTER SPACE

2.11.2.1 BellSouth will provide Covad with access to the High Frequency Spectrum as follows:

2.11.2.2 BellSouth will install splitters within thirty-six (36) calendar days of Covad's submission of such order to the BellSouth Complex Resale Support Group.

2.11.2.3 BellSouth shall provide Covad the status of manually submitted LSRs for end user line sharing orders through the PON Report on the CLEC Operations Website at <https://clec.bellsouth.com>.

Status shall include FOC Sent, Pending, Cancelled, In Clarification, Jeopardies or Rejected. A description of these statuses can be found on this website. This is a secure website. Passwords can be obtained from your account team.

For LSRs submitted through an electronic interface (EDI, TAG, LENS, RoboTAG), the following responses will be returned to Covad electronically: FOCs, Completion Notices, Errors/Clarifications, Pending Order Status, Jeopardies, e.g. missed appointments. Covad may view CSRs through LENS.

Covad may determine the status of its line sharing end user service orders through CSOTS (CLEC Service Order Tracking System). The service order statuses are described in the Pending Order Status Job Aid located on the web at http://www.auteconnection.bellsouth.com/markets/lec/oss_info.html. Passwords for CSOTS can be obtained from the account team.

Covad may determine the status of its COSMOS/SWITCH work order for its line sharing end user orders through the COSMOS/SWITCH Line Sharing Report. These reports will provide the telephone number, CLLI code, cable and pair, splitter

- 1.5 Payment Due. The payment will be due on or before the next bill date (i.e., same date in the following month as the bill date) and is payable in immediately available funds, except as set forth in section 1.4.

If the payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If the payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday. If payment is not received by the payment due date, a late payment penalty, as set forth in Section 1.7, below, shall apply.

- 1.6 Tax Exemption. Upon proof of tax exempt certification from Covad, the total amount billed to Covad will not include those taxes or fees for which the CLEC is exempt. Covad will be solely responsible for the computation, tracking, reporting and payment of all taxes and like fees associated with the services provided to the end user of Covad. Once tax exempt certification and an accounting of reimbursable fees is presented to BellSouth, BellSouth shall promptly discontinue taxes and provide a credit where appropriate within thirty (30) days from the date that BellSouth receives tax exemption notice.

- 1.7 Late Payment. If any portion of the payment is received by BellSouth after the payment due date as set forth preceding, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment penalty shall be due to BellSouth. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor and will be applied on a per bill basis. The late factor shall be as set forth in Section A2 of the General Subscriber Services Tariff, Section B2 of the Private Line Service Tariff or Section E2 of the Intrastate Access Tariff, whichever BellSouth determines is appropriate. Covad will be charged a fee for all returned checks as set forth in Section A2 of the General Subscriber Services Tariff or pursuant to the applicable state law. For Collocation, Covad will pay a late payment charge of one and one-half percent (1-1/2%) assessed monthly on any balance which remains unpaid after the payment due date.

- 1.8 Discontinuing Service to Covad. The procedures for discontinuing service to Covad are as follows:

- 1.8.1 BellSouth reserves the right to suspend or terminate service for nonpayment of services or in the event of prohibited, unlawful or improper use of BellSouth facilities or service or any other violation or noncompliance by Covad of the rules and regulations contained in BellSouth's tariffs.

- 1.8.2 If payment of account is not received by the bill date in the month after the original bill date, BellSouth may provide written notice to Covad that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifteenth day following the date of the notice. In addition, BellSouth may, at the same time, give thirty (30) days notice to Covad at the billing address to discontinue the provision of existing services to Covad at any time thereafter.
- 1.8.3 In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due.
- 1.8.4 If BellSouth does not discontinue the provision of the services involved on the date specified in the thirty days notice and Covad's noncompliance continues, nothing contained herein shall preclude BellSouth's right to discontinue the provision of the services to Covad without further notice.
- 1.8.5 If payment is not received or satisfactory arrangements made for payment by the date given in the written notification, Covad's services will be discontinued. Upon discontinuance of service on Covad's account, service to Covad's end users will be denied. BellSouth will reestablish service at the request of the end user or Covad for BellSouth to reestablish service upon payment of the appropriate connection fee and subject to BellSouth's normal application procedures. Covad is solely responsible for notifying the end user of the proposed service disconnection. If within fifteen (15) days after an end user's service has been denied and no arrangements to reestablish service have been made consistent with this subsection, the end user's service will be disconnected.
- 1.9 Deposit Policy. When purchasing services from BellSouth, Covad will be required to complete the BellSouth Credit Profile and provide information regarding credit worthiness. Based on the results of the credit analysis, the Company reserves the right to secure the account with a suitable form of security deposit. Such security deposit shall take the form of cash, an Irrevocable Letter of Credit (BellSouth form), Surety Bond (BellSouth form) or, in its sole discretion, some other form of security. Any such security deposit shall in no way release Covad from his obligation to make complete and timely payments of his bill. Such security shall be required prior to the inauguration of service. If circumstances so warrant and/or gross monthly billings increased beyond the level initially used to determine the level of security, then BellSouth reserves the right to request additional security and/or file a Uniform Commercial Code (UCC-1) security interest in Covad's "accounts receivables and proceeds." Interest on a security deposit, if provided in cash, shall accrue and be paid in accordance with the terms in the appropriate BellSouth tariff.

In determining whether a security deposit is required, BellSouth will review Covad's Dun & Bradstreet rating and report details, Covad's payment history with BellSouth and payment history with others as available; the number of years Covad has been in

business; Covad's management history and managers' length of service with Covad; liens, suits and judgments against Covad; UCC-1 filings against Covad's assets; and to the extent available, Covad's financial information. Upon the conclusion of this review, if BellSouth continues to insist on additional security, at Covad's written request, BellSouth will provide an explanation in writing to Covad justifying the decision for additional deposit.

- 1.10 Rates. Rates for Optional Daily Usage File (ODUF), Enhanced Optional Daily Usage File (EODUF), Access Daily Usage File (ADUF), and Centralized Message Distribution Service (CMDS) are set out in Exhibit A to this Attachment. If no rate is identified in this Attachment, the rate for the specific service or function will be as set forth in applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.
2. **Billing Accuracy Certification**
 - 2.1 Upon request, BellSouth and Covad will agree upon a billing quality assurance program for all billing elements covered in this Agreement that will eliminate the need for post-billing reconciliation. Appropriate terms for access to any BellSouth documents, systems, records, and procedures for the recording and billing of charges will be part of that program.
 - 2.2 As part of the billing quality assurance program, BellSouth and Covad will develop standards, measurements, and performance requirements for a local billing measurements process. On a regular basis BellSouth will provide Covad with mutually agreed upon performance measurement data that substantiates the accuracy, reliability, and integrity of the billing process for local billing. In return, Covad will pay all bills received from BellSouth in full by the payment due date.
 - 2.3 Local billing discrepancies will be addressed in an orderly manner via a mutually agreed upon billing exemption process.
 - 2.3.1 Each Party agrees to notify the other Party upon identifying a billing discrepancy. The Parties shall endeavor to resolve any billing discrepancy within thirty (30) calendar days of the notification date. A mutually agreed upon escalation process will be established for resolving local billing discrepancies as part of the billing quality assurance program.
 - 2.3.2 Closure of a specific billing period will occur by joint agreement of the Parties whereby the Parties agree that such billing period is closed to any further analysis and financial transactions except those resulting from regulatory mandates. Closure will take place within a mutually agreed upon time interval from the bill date. The month being closed represents those charges that were billed or should have been billed by the designated bill date. "Closure" shall mean no new Covad accounts shall be added to the bill for the billing period at issue.

REQUEST: Identify the section of the BellSouth/Covad interconnection agreement under which BellSouth has authority to remove copper facilities, thereby terminating Covad customers' service.

RESPONSE: The parties' interconnection agreement does not explicitly address the subject of the removal of copper facilities, nor does it need to do so. Neither the Act nor FCC rules have ever imposed a blanket prohibition on BellSouth's ability to retire copper loops and subloops. Rather, the Act and FCC rules have simply required that all ILECs provide adequate public notice of any network changes that may impact a CLP's ability to provide service. After learning of the North Carolina Department of Transportation's decision to widen the road in question, BellSouth provided notice to all CLPs of its decision to replace the copper plant currently in place along that road's right-of-way.