

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF DIECA COMMUNICATIONS, INC.)	
D/B/A COVAD COMMUNICATIONS COMPANY)	CASE NO.
FOR ARBITRATION OF INTERCONNECTION)	2004-00259
AGREEMENT AMENDMENT WITH)	
BELLSOUTH TELECOMMUNICATIONS, INC.)	
PURSUANT TO SECTION 252(B) OF THE)	
TELECOMMUNICATIONS ACT OF 1996)	

O R D E R

On October 18, 2004, based on a request of the parties to address the legal issue of whether BellSouth Telecommunications, Inc. ("BellSouth") is obligated to provide DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") access to line sharing after October 2004, the Commission found as follows: pursuant to 47 U.S.C. § 271(c)(2)(B)(iv), BellSouth has an obligation to unbundle local loop transmission from the central office to the customer's premises. BellSouth's obligations pursuant to competitive checklist item 4 do not include line sharing arrangements. BellSouth is obligated to provide the whole loop, but not obligated to provide any portion of it on a separate and unbundled basis.

However, on October 27, 2004, the Federal Communications Commission (“FCC”) released a Memorandum Opinion and Order which potentially calls into question the Commission’s Order.¹

On November 10, 2004, Covad filed a motion for reconsideration of this Commission’s Order. Based on conflicting statements by Chairman Michael K. Powell and Commissioner Kevin Martin regarding the intent and scope of the FCC order, Covad asserts this Commission should reconsider its conclusions. BellSouth has responded to Covad’s motion, contending that nothing in the FCC’s order or concurring statements justifies reconsideration of the Commission’s decision.

Based on these conflicting statements and questions that remain regarding whether BellSouth was relieved by the FCC from line sharing obligations under Section 271, the Commission finds that rehearing should be granted. Thus, this matter shall be held in abeyance pending appropriate clarification and guidance from the FCC as to BellSouth’s continuing obligation to provide line sharing. Upon such clarification and guidance by the FCC, this Commission will remove this matter from abeyance and a decision upon rehearing will be made which may or may not result in a true-up of the rates for line sharing, retroactive to October 18, 2004. Should the FCC fail to provide clarification and guidance on this issue within 3 months from the date of this Order, the Commission shall review this matter again at the request of either party. Until

¹ Petition for Forbearance of the Verizon telephone companies pursuant to 47 U.S.C. § 160(c), Memorandum Opinion and Order, FCC 04-254, WC Docket No. 01-338 (rel. October 27, 2004). This Memorandum Opinion and Order also addresses BellSouth Telecommunications, Inc.’s Petition for Forbearance under 47 U.S.C. § 160(c), WC Docket No. 04-48.

clarification and guidance are provided by the FCC or by future Order of this Commission, BellSouth shall continue to provide line sharing to Covad.

The Commission, having considered Covad's motion and BellSouth's response thereto, and having been otherwise sufficiently advised, HEREBY ORDERS that Covad's motion for reconsideration shall be granted and this matter is held in abeyance pending clarification and guidance as described herein.

Done at Frankfort, Kentucky, this 30th day of November, 2004.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:



Executive Director