

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

**RECEIVED**

**OCT 24 2003**

**PUBLIC SERVICE  
COMMISSION**

In the Matter of:

REVIEW OF FEDERAL COMMUNICATIONS )  
COMMISSION'S TRIENNIAL REVIEW ORDER ) CASE NO. 2003-0379  
REGARDING UNBUNDLING REQUIREMENTS )  
FOR INDIVIDUAL NETWORK ELEMENTS )

**BELLSOUTH TELECOMMUNICATIONS, INC.'S  
GENERAL OBJECTIONS TO  
COVAD COMMUNICATIONS COMPANY'S FIRST SET OF DATA REQUESTS**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits the following General Objections to Covad Communications Company's (hereinafter "Covad") First Data Requests dated October 10, 2003, and states as follow:

The objections stated herein are preliminary in nature. Should additional grounds for objection be discovered as BellSouth prepares its answers to the above-referenced interrogatories and request for production of documents, BellSouth reserves the right to supplement, revise, or modify its objections at the time it serves its responses.

**GENERAL OBJECTIONS**

BellSouth makes the following general objections to Covad's data requests:

1. BellSouth objects to any data request to the extent that such data requests may seek to impose an obligation on BellSouth to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on grounds

that such requests are irrelevant, overly broad, unduly burdensome, oppressive, and not permitted by the applicable rules of discovery.

2. BellSouth has interpreted Covad's data requests to apply to BellSouth's regulated intrastate operations in Kentucky and will limit its responses accordingly. To the extent that any request is intended to apply to matters other than Kentucky intrastate operations subject to the jurisdiction of the Commission, BellSouth objects to such requests as irrelevant, overly broad, unduly burdensome, and oppressive.

3. BellSouth objects to each and every data request and instruction to the extent that such request or instruction calls for information that is exempt from discovery by virtue of the attorney client privilege, the work product doctrine, or other applicable privilege.

4. BellSouth objects to each data request to the extent that it is vague, ambiguous, overly broad, imprecise, or to the extent that it utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of these data requests. Any answers provided by BellSouth in response to these data requests will be provided subject to, and without waiver of, the foregoing objections.

5. BellSouth objects to each data request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action.

6. BellSouth objects to providing information to the extent that such information has already been provided, is already within the possession of Covad, or is readily accessible through publicly available means.

7. BellSouth objects to each data request to the extent that responding to it would be unduly burdensome, expensive, oppressive, or excessively time consuming.

8. BellSouth objects to any data requests that seek to obtain "all" of particular documents, items, or information to the extent that such requests are overly broad and unduly burdensome. Any answers provided by BellSouth in response to these data requests will be provided subject to, and without waiver of, the foregoing objection.

9. BellSouth is a large corporation with employees located in many different locations in Kentucky and in other states. In the course of its business, BellSouth creates countless documents that are not subject to Commission or FCC retention of records requirements. These documents are kept in numerous locations that are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document has been identified in response to these requests. BellSouth will conduct a search of those files that are reasonably expected to contain the requested information. To the extent that the data requests purport to require more, BellSouth objects on the grounds that compliance would impose an undue burden or expense.

## SPECIFIC OBJECTIONS

BellSouth objects to Covad's Data Request Nos. 1 – 7 on the grounds that this discovery is not relevant to this docket and is not reasonably calculated to lead to the discovery of admissible evidence. The question of whether CLECs are impaired without access to: (1) local circuit switching; (2) high capacity loops; or (3) high capacity transport does not involve an assessment of availability of line splitting. This Commission's job is to assess a CLEC's ability to compete without access to unbundled local switching. ¶ 460-524.<sup>1</sup> If BellSouth does not meet one of the FCC's two triggers, this Commission must evaluate certain economic and operational criteria to determine whether or not carriers are impaired in the market. *See Triennial Review Order*, at ¶ 424. Impairment is, essentially, the determination of whether a market allows self-provisioning of local circuit switching, or, said another way, can a CLEC economically deploy its own switches? *Triennial Review Order*, at ¶¶ 506-520. The availability of line splitting has nothing to do with the question of whether a CLEC can self-provision switching.

Covad's request for this discovery gets the *Triennial Review Order* precisely backwards. In Florida on this same issue Covad has argued that the "competitors' ability to access the incumbents' switching facilities, however, is operationally and economically entwined with their ability to provide their customers data services." The issue for the Commission, however, is not a CLEC's access to the ILEC's switch, but whether the CLEC can economically deploy *its own* switch.

---

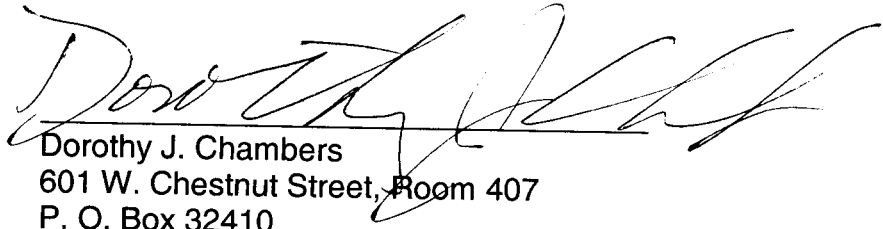
<sup>1</sup> This Commission must also apply the triggers applicable to high capacity loops and high capacity transport. Covad's data requests are equally irrelevant to the loop and transport triggers.

Covad will argue that because the FCC listed revenues a “competitor is likely to obtain from using its facilities for providing data and long distance services” that means the Commission must assess line splitting. This also misstates the Commission’s obligations in the switching case. The revenues at issue in the 9-month case are revenues for a hypothetical, efficient CLEC. Such a CLEC would provide its own voice and data services to maximize revenue. Thus, the revenues that an efficient CLEC who deploys the switch can obtain are revenues from its own voice and data services. Line splitting, an arrangement in which a CLEC only provides voice and allows a second CLEC to provide data, is irrelevant to the assessment of the truly efficient CLEC.

Finally, the hot cut process identified by the FCC involves the “migration of multiple lines served using unbundled local circuit switching to switches operated by a carrier other than the incumbent LEC for any requesting telecommunications carrier....” Rule 51.319(d)(2)(ii)(A)(3). The process in which the FCC is interested, therefore, involves the migration of loops – not portions of loops and not facilities (like splitters) on those loops. Moreover, the impairment question at issue in this proceeding involves impairment of voice-grade services. Line splitting is relevant only to data services and thus does not impact the impairment question for local circuit switching.

For these reasons, Covad’s data requests are not relevant to this proceeding and BellSouth objects to answering such data requests.

Respectfully submitted,



Dorothy J. Chambers  
601 W. Chestnut Street, Room 407  
P. O. Box 32410  
Louisville, KY 40232  
(502) 582-8219

R. Douglas Lackey  
Meredith E. Mays  
Suite 4300, BellSouth Center  
675 W. Peachtree Street, N.E.  
Atlanta, GA 30375  
(404) 335-0747

COUNSEL FOR BELL SOUTH  
TELECOMMUNICATIONS, INC.

509457