

Legal Department

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VIA HAND DELIVERY AND US MAIL

Chairman Lisa Polak Edgar
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 041269-TP

Dear Chairman Edgar:

On February 14, 2006, counsel for Covad Communications Company ("Covad") submitted a written request that the Commission *sua sponte* withdraw portions of its staff recommendations and effectively reconsider its decision on certain issues (Issue Nos. 5, 13, 16-18, and 22) in the above-listed proceeding. Covad's request is based on the actions of Doris Moss, a former staff member, in submitting unsolicited, anonymous, and disguised emails to the Commission, and purportedly to BellSouth as well. This letter responds to Covad's letter and request.

Covad's basic premise for its request is simply wrong. Covad apparently believes that the action of a single staff member prevents the Commissioners from fulfilling their obligations under Florida law to independently evaluate and render decisions on disputed matters. Covad asks this Commission to believe that a recommendation by staff is something more than what it truly is – a recommendation. Florida Statutes, Section 350.001, clearly provides "[t]he Florida Public Service Commission shall perform its duties independently." And, as succinctly stated by the Commission in Docket No. 001305-TP regarding a similar request by another CLEC, "[a]ssuming arguendo that our staff's recommendation were flawed, we are the decision-makers in this case" not staff. See Order No. 02-0413-TP at 18.

Simply put, contrary to Covad's allegations, it is the job of the Commissioners to independently consider and evaluate all of staff's recommendations. BellSouth is unaware and Covad has not alleged any facts that prevented the *Commissioners* from exercising their statutorily-mandated independent judgment in this case. Notably, the investigation conducted by the Commission's Office of the General Counsel into the emails at issue belies Covad's insinuations. Specifically, the Office of the General

Counsel found that (1) no party was adversely impacted by the events giving rise to Covad's request and (2) no Commissioner even read the emails in question.

Further, any suggestion of nefarious activity by BellSouth is incorrect and devoid of any evidence in support. BellSouth did not ask to receive random, anonymous emails from an unidentified individual; BellSouth has disclosed to the Commission all of the emails it received from Ms. Moss or individuals using various pseudonyms; BellSouth has not received any other communications from Ms. Moss (appropriate or otherwise) or from individuals using her alleged pseudonyms in this or any other proceeding; and, assuming that Ms. Moss did in fact send all of the emails in question, BellSouth has no knowledge about the reasons why she sent the unsolicited emails in the first place. Given these facts, the Commission has ample reason to reject Covad's request.

Covad also takes exception to the portions of the staff recommendation that Ms. Moss prepared; namely Issues 16 and 17, which concern line sharing. Covad suggests that the Commission reached its decision on this issue only because Ms. Moss was biased. This erroneous implication is contradicted by a prior Commission staff recommendation. Specifically, in Docket No. 040601-TP, the Commission staff recommended that "line sharing is not a 'local loop transmission from the central office to the customer's premises' as required by checklist item 4. If line sharing does not come under checklist item 4 and therefore is not required to be provided pursuant to section 271, staff believes BellSouth is no longer obligated to provide Covad access to new line sharing arrangements after October 2004." (Sept. 24, 2004, Staff Recommendation, p. 11). Ms. Moss is not listed as a participating staff member in Docket No. 040610-TP and to BellSouth's knowledge did not participate in that proceeding. Thus, the remedy that Covad seeks -- that staff other than Ms. Moss prepare a recommendation on the line sharing issues -- already took place and staff other than Ms. Moss reached the same conclusion as she and the Commission here.

Moreover, as a practical matter, Covad's requested relief makes little sense given that the Commission properly determined that it has no authority over Section 271 checklist items. Consequently, even if the Commission adopted Covad's flawed legal reasoning in the context of a Commission-initiated reconsideration motion, it has already found that it would have no enforcement authority over line sharing.

Additionally, Covad, in its attempt to persuade this Commission to grant the relief it requests, misstates state commission precedent on this issue. As BellSouth made clear in its post-hearing brief, state commissions in Illinois, Massachusetts, Michigan, and Rhode Island have ruled in a manner consistent with this Commission. Thus, Covad is incorrect in stating this Commission "is the only commission in the nation" to rule adversely to its position on the line sharing issue.

Finally, BellSouth does agree that all parties appearing before the Commission are entitled to fairness and impartiality but disputes that the Commission did not provide such treatment to Covad or any other CLEC in this proceeding. And no matter how hard Covad tries, an adverse ruling by the Commission does not equate into bias by the Commissioners. Accordingly, while BellSouth does not believe that reconsideration of the issues that Ms. Moss prepared, or reconsideration of the issues that were the subject of the emails in question is necessary to ensure fairness and impartiality to the parties, BellSouth has no objection to *sua sponte* reconsideration of Issues 5, 13, 16-18, and 22 by the panel of Commissioners that heard this case if that panel deems such action appropriate. BellSouth would respectfully request that, should the panel take such action, reconsideration occur as expeditiously as possible, preferably by the next regularly scheduled agenda session.

In no event, however, should the Commission withdraw or suspend its current rulings on these issues while additional review is being conducted. It is essential to the orderly process of business that CLECs and BellSouth implement contract amendments consistent with the Commission's decision by March 11, 2006. If the Commission reaches a different conclusion after further examination, the parties can handle it via an additional amendment. The Commission should not allow Covad's request to circumvent the Commission's directive to execute amendments compliant with its decision by February 27, 2006, unless otherwise mutually agreed to.

Sincerely,


Meredith E. Mays

cc: Governor Bush
Senator Lee Constantine
Commissioner Isilio Arriaga
Commissioner J. Terry Deason
Commissioner Matthew M. Carter II
Commissioner Katrina J. Tew
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