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October 5, 2005

Elizabeth O' Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40601

Re: Case No. 2004-00259 -- Petition Of Dieca Communications, Inc. d/b/a Covad Communications Company For Arbitration Of Interconnection Agreement Amendment With Bellsouth

Case No. 2004-004247 – Petition of BellSouth Telecommunications, Inc. to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law (filed electronically)

Dear Ms. O'Donnell:

On September 30, BellSouth lifted a fragment from one of 473 footnotes in the FCC's 133 page *Report and Order* in WC-Dkt. 02-33 (the "*Wireline Broadband Order*"¹), then advanced that fragment (without supplying a copy of the *Report and Order*) as support for BellSouth's claim that it has no § 271 obligation to provide linesharing to Covad. BellSouth claims that since the *Wireline Broadband Order* "made no mention of a Section 271 line sharing arrangement," one must not exist. BellSouth errs -- the *Wireline Broadband Order* does not discuss linesharing as a § 271 obligation because the proceeding had nothing to do with either linesharing or § 271. *Wireline Broadband* deals with a completely different issue -- whether ILECs should be required to provide DSL transport to ISPs pursuant to tariff. DSL transport is not at issue in Covad's arbitration here, and was not part of the *Triennial Review* proceeding discussed in the footnote cited by BellSouth. Thus, the *Wireline Broadband Order* and the earlier *Triennial Review Order* ("*TRO*") cannot be conflated to boost the proposition BellSouth is trying to support here.

¹ The complete text of the Order is available at:
http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-150A1.doc

Indeed, the footnote cited by BellSouth is not only irrelevant here; it is completely unremarkable to begin with. Footnote 157 merely recites what the FCC did two years ago in the *TRO* when it affirmed that CLECs have the right to use stand-alone copper loops to provide broadband services. In the *TRO*, the FCC declined to readopt linesharing rules under § 251. As this Commission already knows, Covad filed its arbitration petition long after the *TRO* and is not claiming a right to linesharing under that part of the Act.

That the *Wireline Broadband Order* does not discuss linesharing to any significant degree is similarly unremarkable. The *Wireline Broadband Order* relates to the obligations of incumbents generally, and like the *TRO*, has nothing to do with the unique obligations of BellSouth and other BOCs under § 271. The significance of the *Wireline Broadband Order* to Kentucky is in its confirmation of a legal principle BellSouth and the Kentucky Commission agreed on years ago² – Internet access service, including service using DSL technology, is an “information service” under the Act. The order, however, is irrelevant to the linesharing question currently before the Kentucky Commission.

For the Commission’s convenience, here is the complete text of the footnote cited by BellSouth:

157 The Commission’s *Triennial Review Order* expressly reaffirmed the competitive LECs’ right to obtain unbundled access to stand-alone copper loops in order to provide broadband transmission services. *See Triennial Review Order*, 18 FCC Rcd at 17128-32, paras. 248-54. In addition, we reaffirmed the incumbent LECs’ obligation to provide competitive LECs with the ability to line split (*i.e.*, where one competitive LEC provides narrowband voice service over the same loop that a second competitive LEC uses to provide DSL service). *Id.* at 17130-31, paras. 251-52. In that order, the Commission also grandfathered existing line sharing customers and declined to reinstate the Commission’s vacated line sharing rules. The Commission instead established a three-year transition after which any new customer must be served through a line splitting arrangement, through use of the stand-alone copper loop, or through an arrangement that a competitive LEC has negotiated with the incumbent LEC to replace line sharing. Line sharing allowed a competing carrier to provide DSL service over the high-frequency portion of the same loop that the incumbent LEC uses to provide voice service. *Id.* at 17132-41, paras. 255-69. The D.C. Circuit expressly upheld the Commission’s decision not to require line sharing. *USTA II*, 359 F.3d at 585. As we discuss in part VI.D, below, the decisions contained in this Order have no affect on competitive LECs’ ability to obtain UNEs, or on the section 251(c) obligations of incumbent LECs.

² *See, e.g., Petition of BellSouth for Exemption of Internet Routing and Access Services from Regulation*, Case No. 96-441 (November 14, 1996) (BellSouth Internet access services generally); *Cinergy Communications Co.*, Case No. 2001-00432 (October 15, 2002) (acknowledging that PSC does not regulate information services, including BellSouth’s DSL-based Internet access service, FastAccess).

Elizabeth O'Donnell
October 5, 2005
Page 3

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Sincerely yours,

A handwritten signature in black ink, appearing to read "Douglas F. Brent". The signature is stylized with a long horizontal stroke extending to the right.

Douglas F. Brent