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February 25, 2000

VIA HAND DELIVERY

FILED

FEB 25 2000

Mr. Dale Roberts
Executive Secretary
Missouri Public Service Commission
301 West High Street, Suite 530
Jefferson City, Missouri 65101

**Missouri Public
Service Commission**

Re: *In the Matter of the Petition of DIECA Communications, Inc. d/b/a Covad
Communications Company for Arbitration of Interconnection Rates, Terms,
Conditions and Related Arrangements With Southwestern Bell Telephone
Company
Case No. TO-2000-322*

Dear Mr. Roberts:

Enclosed for filing with the Commission is DIECA Communications, Inc. d/b/a Covad Communications Company's Suggestions in Support of its Motion to Take Administrative Notice. The original and 14 copies of this document will be forwarded by Federal Express for delivery on February 28, 2000.

Please do not hesitate to contact me if you should have any questions. Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Lisa C. Creighton /cmw
Lisa C. Creighton

LCC/cmw
Enclosures

cc: Office of Public Counsel
Office of General Counsel

FILED

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FEB 25 2000

IN THE MATTER OF THE PETITION OF)
DIECA COMMUNICATIONS, INC.)
D/B/A COVAD COMMUNICATIONS COMPANY)
FOR ARBITRATION OF INTERCONNECTION)
RATES, TERMS, CONDITIONS AND RELATED)
ARRANGEMENTS WITH SOUTHWESTERN)
BELL TELEPHONE COMPANY)

Missouri Public
Service Commission

Case No. TO-2000-322

DIECA COMMUNICATIONS, INC. D/B/A COVAD COMMUNICATIONS
COMPANY'S SUGGESTIONS IN SUPPORT OF ITS MOTION
TO TAKE ADMINISTRATIVE NOTICE

COMES NOW, DIECA Communications, Inc. d/b/a/ Covad Communications Company ("Covad") and in support of its Motion to Take Administrative Notice states as follows:

1. On February 15, 2000, Covad filed its Motion to Take Administrative Notice. Southwestern Bell Telephone Company ("SWBT") then filed a brief in opposition, challenging Covad's Motion as to (1) an Interconnection Agreement under §§ 251 and 252 of the Telecommunications Act of 1996, dated August 18, 1998, between Ameritech Information Industry Services and Accelerated Connections ("Interconnection Agreement"); and (2) a tariff filed by Bell Atlantic in compliance with Utility Commission Order and Opinion in Docket A-310203F002, et al., entered August 7, 1997 ("Bell Atlantic tariff").¹ SWBT's opposition is based on three separate grounds: (a) lack of foundation, (b) hearsay, and (c) a lack of relevance. None of these grounds has any merit.

¹ SWBT does not contest Covad's Motion to Take Administrative Notice as to the November 30, 1999 Arbitration Award involving Covad and SWBT, which is attached to Benard Chao's direct testimony.

2. Agencies "shall take administrative notice of all matters of which the courts take judicial notice." Mo. Rev. Stat. § 536.070(6). Pursuant to Mo. Rev. Stat. § 490.080, "[e]very court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States." Tariffs and interconnection agreements are appropriate subjects of administrative notice, because they are required to be filed with the state, are approved by state commissions and are subject to public inspection. *Central Controls Co., Inc. v. AT & T Information Systems, Inc.*, 746 S.W.2d 150, 153 (Mo. App. 1988).

3. The Bell Atlantic tariff is a proper subject for administrative notice, because it is required by law to be filed with state agencies. Similarly, the Interconnection Agreement is required by federal law to be filed with the state agency responsible for regulating the telecommunications industry, and therefore it is appropriate for administrative notice. (*See* 47 U.S.C. § 252)

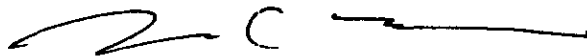
4. SWBT concedes that the Commission may take administrative notice of its own orders and publicly-filed documents, such as tariffs. (*See* SWBT Opposition at 2). However, SWBT contends that "it is not appropriate to take administrative notice of a document which purports to be from another jurisdiction and contains no indicia to establish that it is complete, accurate, or filed with or approved by any regulatory authority." (*Id.*). SWBT cites no authority for this proposition. There is nothing in the rule providing for administrative notice that limits the Commission from taking administrative notice of orders only from its own jurisdiction. (*See* 4 C.S.R. 240-2.130(1); Mo. Rev. Stat. 536.070(6)). Indeed, Missouri law specifically recognizes that judicial notice, and therefore administrative notice, extends to documents from outside this jurisdiction. (*See* Mo. Rev. Stat. § 490.080). Nor is there any requirement that a document be independently certified before the Commission may take administrative notice of it.

5. SWBT also contends that the Commission may not take administrative notice of a document that contains hearsay. (*See* SWBT Opposition at 2). Again, this argument is simply preposterous. SWBT cites no authority for the proposition that only non-hearsay documents may be noticed administratively by the Commission. The very purpose of administrative notice is to admit documents that would otherwise be inadmissible.

6. Finally, SWBT contends that Covad has failed to establish that the documents are relevant. (*Id.* at 3). Both documents are relevant to show that the price for two-wire digital loop should not be substantially higher than the cost for basic analog loops. The price comparisons drawn from these two documents demonstrate that other local exchange carriers, including a SWBT affiliate, have only slight differences between basic and digital loops. Therefore, both documents are relevant.

WHEREFORE, DIECA Communications, Inc. d/b/a Covad Communications Company, respectfully requests the Commission take administrative notice of the above documents.

Respectfully submitted,



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ATTORNEYS FOR DIECACOMMUNICATIONS,
INC. D/B/A COVAD COMMUNICATIONS
COMPANY

CERTIFICATE OF SERVICE

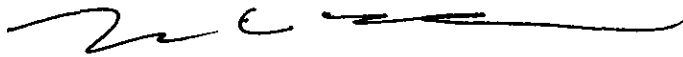
I hereby certify that a true and correct copy of the above and foregoing was transmitted via facsimile and Federal Express this 25th day of February, 2000, to:

Paul Lane, Esq.
Southwestern Bell Telephone
One Bell Central, Room 3516
St. Louis, Missouri 63101

Office of General Counsel
ATTN: Bill Haas
P. O. Box 360
Jefferson City, Missouri 65102

With copies being mailed on the same date, postage prepaid, to:

Office of the Public Counsel
P. O. Box 7800
Jefferson City, Missouri 65102



Attorney for DIECA Communications, Inc.
d/b/a Covad Communications Company