

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

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

DIECA COMMUNICATIONS, INC.
D/B/A COVAD COMMUNICATIONS COMPANY'S
MOTION FOR TO STRIKE CERTAIN PORTIONS OF
THE TESTIMONY OF DAVE S. BORDERS

FILED²
FEB 15 2000
Missouri Public
Service Commission

Comes now DIECA Communications, Inc., dba Covad Communications ("Covad"), and moves to strike certain portions of the testimony of Dave S. Borders, an expert witness sponsored by Southwestern Bell Telephone Company ("SWBT") in this proceeding.

Mr. Borders has been identified as an expert witness for SWBT on outside plant issues, and as such he was responsible for compiling certain of the inputs which SWBT used in its cost studies to support the charges for line conditioning and loop qualification. (Borders Depo. p. 38 l. 19-21). Based on the testimony elicited in his deposition, much of Mr. Borders' testimony is based on inadmissible hearsay and should be stricken. As an expert witness, Mr. Borders is entitled to rely on hearsay in formulating the assumptions on which he bases his expert opinions, but he cannot do so if he cannot identify the source of the information. To allow such testimony into evidence would unfairly deprive Covad of its rightful opportunity to challenge the basis of Mr. Borders' opinions.

In formulating his opinions, Mr. Borders did not refer to any SWBT or SBC loop deployment policies or guidelines. (Depo. P. 39 l. 14-19). He has never reviewed the performance of SWBT employees performing loop conditioning tasks. (Depo. P. 40 l. 23 - p.

41. L. 1), nor has he personally performed loop conditioning tasks (remove load coils, bridged tap, and repeaters) since 1979, and even then he removed load coils "very rarely." (Depo. P. 80 l. 3-19; p. 82 l. 6-13; p. 86 l. 25- p. 87 l. 5). According to Mr. Borders, SWBT has never performed a time-and-motion study on these tasks. (Depo. P. 118 l. 24 – p. 119 l. 2). He did not rely on any information in JAMOS, the database used to track hours and job functions for construction projects. (Depo. P. 122 l. 12 – p. 124 l. 24).

Mr. Borders testified that he spoke with a cable splicing manager in Dallas (Depo. P. 128 l. 4-9), and an unknown person in Kansas City (Depo. P. 132 l. 16-22) with whom he did not discuss the time for each discrete task. In fact, Mr. Borders did not even know whether the person in Kansas City was a splicing foreman or a construction manager. (Depo. P. 142 l. 3-8). Mr. Borders testified that he spoke to another unidentified SWBT employee in Independence, Missouri, to verify his time estimates. (Depo. P. 143 l. 15-20). But he admits that he did not ask any of these persons how much time it takes to perform the individual tasks involved in line conditioning. (Depo. P. 147 l. 19-23)

In fact, Mr. Borders admitted that the time estimates in his testimony came directly from testimony filed by a SWBT witness in Kansas in an unrelated arbitration. He never talked to that witness about the time estimates, does not know what assumptions on which that witness based his testimony, and knows of no time calculations that witness performed. (Depo. P. 150 l. 13 – p. 151 l. 24). He testified in prefiled testimony that he relied on time estimates from SWBT's Engineering Group, but he does not know what format the information was presented in, does not know when the estimates were prepared, and does not know who created them. (Depo. P. 154 l. 18 – p. 156 l. 3).

In light of these admissions, it is clear that Mr. Borders cannot be allowed to rely on the information on which he bases his time estimates, for a variety of reasons: he cannot identify the sources of the information, he cannot specify how these unnamed sources compiled the information, and he relies on testimony filed by another SWBT witness in another state in an arbitration to which Covad was not a party. This is hearsay which renders the conclusions he draws concerning the time needed to perform line conditioning tasks inadmissible.

Covad requests that the following testimony be stricken:

Borders Rebuttal

Page/line

3 l. 7-11
3 l. 17-19
4 l. 8 – 5 l. 10
9 l. 11 – 10 l. 21
11 l. 11 – 11 l. 22
12 l. 8-21
14 l. 14 – 15 l. 2

Borders Surrebuttal

Page/line

1 l. 19 – 2 l. 17
4 l. 4 – 6 l. 11

Wherefore, Covad Communications respectfully requests that the cited excerpts from Dave Borders' testimony be excluded from the record.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was transmitted via facsimile and mailed, postage prepaid, this 15th day of February, 2000, to:

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