

SONNENSCHN NATH & ROSENTHAL

4520 MAIN STREET SUITE 1100

KANSAS CITY, MISSOURI 64111

Lisa C. Creighton
(816) 932-4461
l3c@sonnenschein.com

(816) 932-4400
FACSIMILE
(816) 531-7545

April 24, 2000

VIA HAND DELIVERY

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

FILED²

APR 24 2000

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 Supplemental Motion for Clarification. The original and 14 copies of this document will be forwarded by Federal Express for delivery on April 25, 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 Creighton /cmw
Lisa C. Creighton

LCC/cmw
Enclosures

cc: Office of Public Counsel
Office of General Counsel
Paul G. Lane, Esq.

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED²
APR 24 2000

Missouri Public
Service Commission

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 SUPPLEMENTAL
MOTION FOR CLARIFICATION**

COMES NOW, DIECA Communications, Inc. d/b/a Covad Communications Company
("Covad") and files with this Commission its Supplemental Motion for Clarification.

1. On March 23, 2000, this Commission issued its Arbitration Order in this docket.

In the Order, the Commission determined that

Covad shall have electronic access only to the relevant loop qualification data that
exists in SWBT's mechanized database by August 1, 2000.

As of the cut-over date Covad shall have electronic access only to the relevant
data through SWBT's OSS at no additional charge. Covad will pay SWBT's
proposed \$15.00 charge for loop qualification until August 1, 2000.

(Arbitration Order at 9.) The Commission also ordered

[t]hat Southwestern Bell Telephone Company shall charge DIECA
Communications Inc., d/b/a Covad Communications Company, a nonrecurring
charge of \$15.00 per loop for loop qualification services until August 1, 2000.
After August 1, 2000, this charge shall not apply.

(Arbitration Order at 19) (emphasis added).

2. Despite the clear directive of this Commission, SWBT maintains that its charge
for performing a manual loop qualification will not be reduced to \$0.00 upon August 1, 2000.
Instead, SWBT contends that the August 1 price reduction applies only to loop qualifications
performed through SWBT's mechanized system. Relying on this faulty contention, SWBT

refuses to execute an interconnection agreement that implements the Commission's ruling regarding loop qualification. As shown below, however, SWBT's strained interpretation of the Commission's Order defies both the plain language of the Order and the federal TELRIC costing principles adopted by this Commission.

3. In reaching the conclusion that SWBT's proposed loop qualification charge "shall not apply after August 1, 2000," the Commission noted that "TELRIC principles require that prices of unbundled network elements be based on forward-looking economic cost, which must be measured based upon the use of the most efficient telecommunications technology currently available." (Arbitration Order at 7.) Although the Commission acknowledged that SWBT's proposed loop qualification charge is based "on an average, which assumes use of both mechanized and manual processes to qualify loops," (Arbitration Order at 6), it applied Covad's interpretation of TELRIC when setting the loop qualification price at \$0.00—i.e., "that the most efficient loop qualification process should be performed on a 100 percent mechanized basis and the price should be zero since the cost for a mechanized process is recovered elsewhere." (Arbitration Order at 7.) Accordingly, the Commission intended to set the price for loop qualification at \$0.00, regardless of whether SWBT provides the loop make-up information mechanically or manually.

4. SWBT's claim that the August 1 price reduction applies only to loop make-up data provided mechanically relies upon a strained and unsupportable interpretation of this Commission's Order. First, SWBT's interpretation wholly ignores the ordering language of the Arbitration Order: "After August 1, 2000, this [\$15.00 loop qualification] charge shall not apply." (Arbitration Order at 19.)

5. SWBT also misinterprets the body of the Commission's Order. The Commission stated that "[a]s of the cut-over date Covad shall have electronic access only to the relevant data through SWBT's OSS at no additional charge." (Arbitration Order at 9.) SWBT claims that the word "only" modifies "electronic access," concluding that the Commission intended to limit the means by which Covad may access loop make-up data. Thus, SWBT wrongly contends, the August 1 price reduction applies only to loop make-up requests that are processed mechanically.

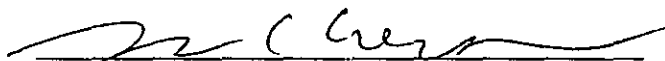
6. SWBT's interpretation defies logic. A plain reading of the above language reveals that the Commission intended the term "only" to modify "the relevant data"—*i.e.*, the loop qualification data that Covad needs to determine the suitability of a loop for DSL. The Commission apparently used the phrase "only to the relevant data" in response to SWBT's faulty contention that Covad required loop make-up information regarding the *location* of interferors instead of merely information regarding the *presence* of interferors. *Compare* Arbitration Order at 7 ("SWBT asserted that determining the location of interferors on the loop was part of the qualification process") *with* Arbitration Order at 8-9 ("Covad stated that it should not have to subscribe to or pay for information that it does not require. . . Covad disagrees with SWBT concerning the amount of information that is required to qualify a loop.").

7. Finally, SWBT's interpretation of the Order would encourage all ILECs to provide a non-functional mechanized loop qualification tool. Indeed, if SWBT were allowed to charge for manual loop qualification, it would have a financial incentive (as well as a competitive incentive) to ensure that all CLEC loop qualification requests are processed using the inefficient manual system. Covad submits that the Commission clearly did not intend such a result.

8. For the foregoing reasons, Covad requests this Commission order SWBT to comply with the arbitration order and to execute an interconnection agreement with Covad that allows the reduction of rates for all loop qualification—including both mechanized and manual qualification—to \$0.00 on or before August 1, 2000.

WHEREFORE, DIECA Communications, Inc. d/b/a Covad Communications Company requests that for all of the reasons stated above, this Commission grant Covad the relief it requests in its Supplemental Motion for Clarification.

Respectfully submitted,



Mark P. Johnson MO #30740

Lisa C. Creighton MO #42194

Sonnenschein, Nath & Rosenthal

4520 Main Street, Suite 1100

Kansas City, Missouri 64111

816/932-4400

816/531-7545 FAX

Christopher Goodpastor

Covad Communications Company

9600 Great Hills Trail, Suite 150W

Austin, Texas 78759

512-502-1713

512-502-1777 FAX

Laura Izon

Covad Communications Company

2330 Central Expressway

Santa Clara, CA 95050

408-844-7500

408-987-1111 FAX

ATTORNEYS FOR DIECA COMMUNICATIONS, 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 forwarded via Federal Express, this 24th day of April, 2000, to:

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

William K. Haas, Esq.
Office of General Counsel
301 West High Street, Room 530
Jefferson City, Missouri 65101

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

Office of the Public Counsel
301 West High Street
Suite 250
Jefferson City, Missouri 65101



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