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February 18, 2000

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

FILED²

FEB 18 2000

Missouri Public
Service Commission

Re: Case No. TO-2000-322

Dear Judge Roberts:

Enclosed, for filing in the above-captioned case, are an original and fourteen copies of Opposition of Southwestern Bell Telephone Company to Covad Communications Company's Motion to Take Administrative Notice.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Paul G. Lane Hm

Paul G. Lane

Enclosures

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

FEB 18 2000

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

**OPPOSITION OF SOUTHWESTERN BELL TELEPHONE COMPANY TO
COVAD COMMUNICATIONS COMPANY'S MOTION TO TAKE
ADMINISTRATIVE NOTICE**

COMES NOW Southwestern Bell Telephone Company ("SWBT") and for its
Opposition to the Motion to Take Administrative Notice filed by DIECA
Communications, Inc., d/b/a Covad Communications Company ("Covad") states as
follows:

1. On February 15, 2000, Covad filed a Motion to Take Administrative
Notice of (1) an interconnection agreement between Ameritech Information Industry
Services and Accelerated Connections and (2) an August 19, 1997 filing by Bell Atlantic-
Pennsylvania in a Pennsylvania proceeding¹.

2. SWBT opposes the Motion to Take Administrative Notice of these two
documents. The basis for the opposition is, in both cases, (a) a lack of foundation, (b)
hearsay and (c) a lack of relevance.

3. With regard to the purported interconnection agreement between
Ameritech Information Industry Services and Accelerated Connections, there has been no
foundation established to show that the document is what it purports to be, or that it is

¹ Covad also sought administrative notice of an interim arbitration award from Texas which was attached to
the prefiled direct testimony of Covad's witness, Bernard Chao. That testimony, including the exhibit,
have already been admitted without objection by any party.

complete and accurate, or that it has been filed with or approved by any utility authority. While the Commission may take administrative notice of its own orders and publicly filed documents, such as tariffs, 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. Simply put, no foundation to take administrative notice of this document has been laid.

4. The document is hearsay and does not qualify under any exception to the hearsay rule. The document purports to be an agreement between two entities that are not parties to this proceeding, and constitutes inadmissible hearsay.

5. Even if a foundation had been properly laid to permit the introduction of the document, there is no showing of relevance. Since Covad has not explained in its Motion what the alleged relevance of the document is, SWBT is hampered in its attempt to respond. But there appears to be no rational reason to support the introduction of an interconnection agreement which does not involve either Covad or SWBT, and is not related to the Missouri jurisdiction. The issues in this case involve prices in Missouri for loop qualification, loop conditioning, cross-connect charges and ISDN loop prices, as well as an issue concerning technical publications. Whatever Covad's reasoning underlying its request, there is no showing of relevance to these issues involving these parties in this jurisdiction.

6. With regard to the purported Bell Atlantic filing, there is likewise a lack of foundation. There is no showing that the document is what it purports to be, or that it is complete or that it is a matter of public record in any jurisdiction. While the Commission

is permitted to take administrative notice of its own orders and case files, it is not appropriate to take administrative notice of pleadings purportedly filed in other jurisdictions which the Commission cannot be assured are accurate, complete or even filed.

7. As with the previous document, the purported Bell Atlantic document is hearsay, not within any exception to the hearsay rule. It is not shown to be a business record of Bell Atlantic, nor can it constitute an admission by a party, since Bell Atlantic is not a participant in this procedure.

8. Even if the proper foundation had been laid for the admission of this document, there has been no showing of relevance to the issues in this proceeding. This case involves five specific issues between Covad and SWBT in Missouri. This case does not involve Bell Atlantic and whatever position Bell Atlantic may have taken in a Pennsylvania proceeding in 1997 is irrelevant here.

7. In summary, no proper foundation has been laid to admit either document, the documents themselves constitute hearsay, and the documents are irrelevant to the issues presented in this proceeding.

WHEREFORE, for all the foregoing reasons, SWBT respectfully requests the Commission to deny Covad's request to take administrative notice of these documents.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By Paul G. Lane /tm

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by Facsimile and by Airborne Express on February 18, 2000.

Paul G. Lane /tm
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