

Paul G. Lane  
General Counsel-  
Missouri

Southwestern Bell Telephone  
One Bell Center, Room 3520  
St. Louis, Missouri 63101  
Phone 314 235-4300  
Fax 314 247-0014

 Southwestern Bell

April 28, 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

FILED<sup>3</sup>

APR 28 2000

Missouri Public  
Service Commission

Re: Case No. TO-2000-322

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Response to DIECA Communications, Inc.'s d/b/a Covad Communications Company's Supplemental Motion for Clarification.

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

Very truly yours,

Paul G. Lane /tm

Paul G. Lane

Enclosure

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>  
APR 28 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

**SOUTHWESTERN BELL TELEPHONE COMPANY'S**  
**RESPONSE TO DIECA COMMUNICATIONS, INC.'S, D/B/A**  
**COVAD COMMUNICATIONS COMPANY'S,**  
**SUPPLEMENTAL MOTION FOR CLARIFICATION**

COMES NOW Southwestern Bell Telephone Company ("SWBT") and, for its Response to DIECA Communications, Inc.'s, d/b/a Covad Communications Company's ("Covad's"), Supplemental Motion for Clarification, states as follows:

1. On March 23, 2000, the Missouri Public Service Commission ("Commission") entered its Arbitration Order<sup>1</sup> in the above-referenced matter.

2. On April 24, 2000, Covad filed its Supplemental Motion for Clarification. By its Supplemental Motion, Covad seeks to impose on SWBT an obligation to perform manual loop qualification without charge in those instances when loop qualification information is not available in SWBT's mechanized database. The Commission should reject Covad's "clarification" request as it is contrary to the Arbitration Order entered by this Commission and would violate the Telecommunications Act. Neither the Arbitration Order nor the Telecommunications Act require SWBT to provide manual loop

<sup>1</sup> 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, March 23, 2000, (hereinafter referred to as "Arbitration Order").

qualification without charge. Rather, SWBT's cost-based rate for performing a manual loop qualification is \$84.15<sup>2</sup>.

3. As explained in detail in the testimony in this case, SWBT currently provides loop qualification through a combination of mechanized and manual means. SWBT proposed a "blended" rate of \$15.00 for loop qualification which was based on a cost study that assumed loops could be qualified via a mechanized database approximately 80% of the time, with manual look up required the remainder of the time.<sup>3</sup>

4. In its Arbitration Order, the Commission ordered SWBT to provide electronic access to SWBT's database by August 1, 2000. The Commission continued the \$15.00 blended rate until August 1, with electronic access to the database to be provided at no additional charge beginning August 1. The Commission stated:

The Commission determines 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, page 9.

5. Although Covad omitted the clarifying language underlined below in its Supplemental Motion, the Order further reflects the Commission's determination that:

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.

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<sup>2</sup> This \$84.15 cost for manual look up was also presented in the BroadSpan Arbitration. See Arbitration Order, Case No. TO-99-370, June 15, 1999, page 5.

<sup>3</sup> In fact, manual look up will be required much more frequently than 20% of the time. This underestimation has benefited Covad during the interim period before August 1, 2000, as it would pay substantially more if the manual percentage had been accurately estimated. As is explained at the hearing, SWBT continued to propose a \$15.00 blended rate for loop qualification as the Commission previously set that rate based on SWBT's estimates in the BroadSpan arbitration.

That on or after August 1, 2000, Southwestern Bell Telephone shall provide DIECA Communications Inc., d/b/a Covad Communications Company, with electronic access to only the relevant loop qualification data that exists in Southwestern Bell Telephone Company's mechanized databases. Covad shall have electronic access to this data through Southwestern Bell Telephone Company's Operational Support System at no additional charge.

Arbitration Order, page 19 (emphasis added).

6. It is clear from the language cited above that the Commission determined that on or after August 1, 2000, SWBT must provide Covad with electronic access to only the relevant loop qualification data that exists in SWBT's mechanized database at no additional charge. The Commission, quite simply, did not order SWBT to perform manual loop qualification for Covad at no charge. As discussed in paragraph 12 below, the Commission did not address manual loop qualification after electronic access to the database is established precisely because Covad erroneously claimed that the database contains all of the information Covad needs to qualify a loop. Covad apparently recognized that its claim is incorrect, and seeks to require SWBT to pay the price for Covad's own incorrect representation.

7. Although it is clear that the Commission did not order SWBT to perform manual loop qualification for Covad without charge, in its Supplemental Motion for Clarification, Covad contends otherwise. This contention is inconsistent with the plain wording of the Arbitration Order, as evidenced above, and is wholly at odds with the Federal Telecommunications Act of 1996 ("FTA"). SWBT will further discuss both the Arbitration Order, as well as the FTA, briefly, below.

8. In its Arbitration Order, the Commission notes that SWBT's loop qualification process is a partially mechanized process wherein "[i]n some cases complete loop makeup data may exist in one or more electronic (or mechanized)

databases, and in some cases a SWBT employee must physically pull a paper map from files and examine the representation of the loop to determine whether or not any interferors are on the loop.” Arbitration Order, page 5. The Commission also noted that the loop qualification charge proposed by SWBT (and adopted in both the BroadSpan and Sprint Interconnection Agreements) is “an average charge reflecting that in some cases all the required loop makeup data would be mechanized and in other cases manual labor would be required.” Id. After August 1, 2000, SWBT is required to provide Covad electronic access to the database containing loop qualification data, but is not required to fully populate the database or to provide manual look up at no charge when the database does not yield an available loop.

9. Neither the Arbitration Order nor FCC rules require SWBT to undertake the costly effort to fully populate the database. The FCC determined that if an ILEC has not compiled loop qualification information for itself in an electronic database, it is not required to conduct a plant inventory and construct a database on behalf of requesting carriers. The FCC stated in pertinent part:

We disagree, however, with Covad’s unqualified request that the Commission require incumbent LECs to catalogue, inventory, and make available to competitors loop qualification information through automated OSS [Operational Support Systems] even when it has no such information available to itself. If an incumbent LEC has not compiled such information for itself, we do not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers. (Emphasis added. Footnotes omitted).

Exhibit 28, UNE Remand Order, paragraph 429.<sup>4</sup>

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<sup>4</sup> The Texas Public Service Commission similarly determined that ILECs do not need to inventory and make available to competitors actual loop make-up information through automated systems when it has no such information available to itself. Public Utility Commission of Texas, Order Approving Interconnection Agreements, Docket Nos. 20226 and 29272, February 7, 2000, page 2.

10. The Arbitration Order also noted the parties' agreement that SWBT is not required to undertake the extraordinary work efforts and costs to mechanize all loop qualification data. Arbitration Order, page 7. The Arbitration Order is entirely consistent with the evidence presented at the hearing. SWBT's pre-filed testimony noted the parties' agreement that a plant inventory was not required. (Exhibit 22, Lube, page 2). Similarly, in its pre-filed testimony, Covad stated:

Covad is not, however, asking the Commission to order SWBT to "mechanize" access to any data that are not already contained in SWBT's existing electronic databases.

(Exhibit 2, Murray, page 3; Transcript 93, Murray). Further, Attachment DSL to the parties' proposed interconnection agreement states:

In accordance with the UNE Remand Order, where SWBT has not compiled loop qualification information for itself, SWBT is not required to conduct a plant inventory and construct a database on behalf of requesting carriers.

(Exhibit 22, Lube, page 3, Schedule 1-9, paragraph 5.4.1).

11. Despite the clarity of the Commission's Arbitration Order and the FCC's prior rulings, as well as Covad's agreement that SWBT has no obligation to populate its mechanized database, Covad now contends that SWBT must nevertheless provide manual look up of loop qualification information not contained in the database without charge to Covad. This extraordinary claim is wholly at odds with the requirements of the FTA. The FTA does not require SWBT to provide unbundled network elements or services to Covad at no charge; rather, Section 252(d)(1) requires the charges to be "based on costs" and to be "non-discriminatory." SWBT conclusively established that its manual loop qualification charge is based on costs and is non-discriminatory in the both the Covad and BroadSpan arbitrations. The FTA clearly requires that SWBT be

compensated for work performed at a CLEC's request. Covad is attempting to require SWBT to provide manual loop qualification for which SWBT's cost-based rate is \$84.15, without any compensation to SWBT whatsoever. Nothing in the FTA permits such a result, and nothing in the Arbitration Order attempt to impose such a result.

12. In its Arbitration Order, the Commission noted Covad's claim that "it is not requesting SWBT to populate its database and that the data it requires already exists in SWBT's database." Arbitration Order, page 7 (emphasis added). Accordingly, the Commission ordered that Covad be provided electronic access to the database on the basis of Covad's claim that the database contained all the information required by Covad to qualify a loop. In fact, as SWBT explained, the database does not contain all of the information necessary for loop qualification. Realizing that its representation to the Commission was simply wrong, Covad now seeks to impose on SWBT its obligation to perform expensive manual loop qualification at no charge in violation of the FTA.

13. Manual loop qualification is expensive, with a cost-based charge of \$84.15 per occurrence. SWBT will perform a manual loop qualification if and when requested by Covad, but SWBT must be compensated for this work. The FTA requires that SWBT be paid for performing work at Covad's request and nothing in the Arbitration Order overrides the requirements of the FTA. The Commission should provide that if Covad requests manual loop qualification, that it must pay the requisite charge (\$84.15).

WHEREFORE, Southwestern Bell prays that this Commission deny Covad's Supplemental Motion for Clarification, together with any further relief the Commission deems just and proper.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By Paul G. Lane / TM  
PAUL G. LANE #27011  
LEO J. BUB #34326  
ANTHONY K. CONROY #35199  
MIMI B. MACDONALD #37606

Attorneys for Southwestern Bell Telephone Company  
One Bell Center, Room 3520  
St. Louis, Missouri 63101  
(314) 235-4300 (Telephone)  
(314) 247-0014 (Facsimile)



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 April 28, 2000.

Paul G. Lane /tm  
Paul G. Lane

WILLIAM HAAS  
MISSOURI PUBLIC SERVICE COMMISSION  
301 WEST HIGH STREET, SUITE 530  
JEFFERSON CITY, MO 65102

LISA C. CREIGHTON  
MARK P. JOHNSON  
SONNENSCHNEIN, NATH & ROSENTHAL  
4520 MAIN STREET, SUITE 1100  
KANSAS CITY, MO 64111