

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

February 7, 2000

VIA HAND DELIVERY

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

FILED²

FEB 7 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 Motion for Order Compelling Compliance with Commission's Order and For Sanctions. The original and fourteen (14) copies of this document will be forwarded by Federal Express for delivery on February 8, 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, ATTN: William K. Haas

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED²
FEB 7 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
MOTION FOR ORDER COMPELLING COMPLIANCE WITH COMMISSION'S
ORDER AND FOR SANCTIONS

DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), by its undersigned counsel, moves the Commission for an order compelling Southwestern Bell Telephone Company ("SWBT") to comply with the Commission's January 25, 2000 Order Regarding Motion to Compel Responses to Data Requests. Covad further moves the Commission for an order sanctioning SWBT for its abuse of the discovery process. In support of this Motion, Covad states as follows:

1. On January 25, 2000, the Commission issued an Order directing SWBT to respond to Covad's First Set of Data Requests, specifically, Data Request Nos. 1, 2, 3, 13, 14, 16, 17, 19, 31, 32, 48, 49, 50, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 66, 74, 75, 76, 77, 78, 79, 85, and 86. In issuing this Order, the Commission explicitly rejected the various objections SWBT raised in its attempt to avoid responding to Covad's Data Requests. The Commission expressly held that the information requested in these Data Requests was "relevant to determining the terms of a just, reasonable, nondiscriminatory interconnection agreement" and directed SWBT to make the requested information available to Covad by February 4, 2000.

2. Because of SWBT's tactics in seeking to avoid responding to these Data Requests, Covad was delayed access to highly relevant information and was forced to seek Commission action compelling responses and modifying the procedural schedule in this arbitration. Despite the Commission's general reluctance to modify an arbitration's procedural schedule, the Commission granted Covad's motion to modify the procedural schedule to allow Covad adequate time to review the compelled information in preparation for the questioning of SWBT's witnesses in depositions scheduled on February 8, 2000, and to address the compelled information and deposition testimony in the filing of surrebuttal testimony on February 10, 2000.

3. SWBT has failed to fully and completely comply with the Commission's Order directing it to provide the information requested in these Data Requests to Covad. At considerable expense, Covad arranged for several individuals to fly to St. Louis, Missouri to review all highly confidential and voluminous documents responsive to the Commission's Order. Covad requested that SWBT have all highly confidential and voluminous documents responsive to these Data Requests available for inspection on Monday, February 7, 2000, starting at 8:00 a.m. SWBT was also asked to have all documents previously reviewed by Covad in Kansas City available for inspection on that date. Moreover, Covad requested that SWBT send to certain specified individuals, via Federal Express on February 4, 2000 (for delivery on Saturday, February 5, 2000), all non-highly confidential and non-voluminous documents that were compelled pursuant to the Commission's Order. Despite Covad's request that SWBT inform its counsel prior to February 7, 2000 the volume of documents that SWBT intended to mark highly confidential or voluminous, SWBT never informed Covad of this requested information. A copy of Covad's correspondence with SWBT's counsel is attached as Exhibit A. On Friday, February 4, 2000, SWBT was informed that four individuals (two experts and two attorneys) would be present for the document review on Monday, February 7, 2000. Once again, SWBT's counsel

was asked to identify the volume of documents that would be made available. SWBT's counsel said he could not respond to the request at that time. No other communication was received from SWBT's counsel prior to February 7, 2000.

4. On February 7, 2000, the four individuals representing Covad arrived at SWBT's office in St. Louis, Missouri to review responsive documents. They were presented with 303 pages, of which 109 pages were redacted. Further, they were told they would not receive any information on current retail DSL offerings, (as the Commission ordered) because as of January 12, 2000, DSL services have been provided through an SWBT affiliate, ASI. Counsel for Covad directed SWBT to the language of the Commission Order that explicitly provided information relating to DSL offerings of its affiliate was relevant to the issues in this arbitration and must be provided. Further, Covad directed SWBT to its current advertisements for DSL service in the *Kansas City Business Journal* and the *St. Louis Business Journal* which state in clear terms that SWBT is currently offering DSL services. (See Exhibit B). Despite this, SWBT refused to provide this information. At this point, Covad believes that to the extent that SWBT has responded, such responses are wholly inadequate and incomplete. Depositions are scheduled for February 8, 2000 and February 9, 2000 and surrebuttal is due February 10, 2000. In light of this, immediate action is need by this Commission to require compliance with its January 25, 2000 order.

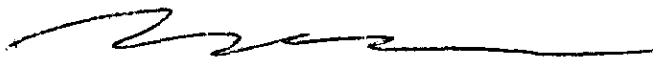
5. The Commission noted in its Order "that posturing or tactics by any party that lack merit and that result in an unfair advantage or delay in this arbitration proceeding present concerns of professional ethics." (Order at 5). SWBT's failure to fully and completely comply with the Commission's Order directing it to make the requested information available to Covad is precisely the type of discovery abuse that the Commission indicated was unacceptable in

proceedings before the Commission. The Commission should not condone SWBT's abuse of the discovery process and failure to comply with the Commission's Order.

6. The Commission is empowered to sanction SWBT's conduct in the manner provided in Rule 61.01 of the Missouri Rules of Civil Procedure. *See* 4 C.S.R. 240-2.090. Covad respectfully requests that SWBT be ordered to pay the reasonable expenses, including attorney's fees, caused by SWBT's abuse of the discovery process and failure to comply with the Commission's Order. Covad further requests that the Commission strike SWBT's direct, rebuttal, and surrebuttal testimony on issues where it has failed to fully and completely answer Covad's Data Requests.

WHEREFORE, DIECA Communications, Inc. d/b/a Covad Communications Company, respectfully requests the Commission issue an Order compelling SWBT to fully and completely comply with the Commission's Order of January 25, 2000 and sanctioning SWBT for its abuse of the discovery process.

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

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

CERTIFICATE OF SERVICE

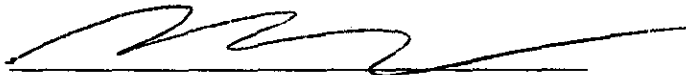
I hereby certify that a true and correct copy of the above and foregoing was transmitted via facsimile and mailed, postage prepaid, this 7th day of February, 2000, to:

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

EXHIBIT A

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

February 2, 2000

VIA FACSIMILE (314) 247-0014

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

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 Paul:

As I stated in my e-mail of January 28, 2000, Covad needs immediate access to the information that has been compelled. Please confirm in writing as soon as possible that Southwestern Bell Telephone Company ("SWBT") will perform the following actions in compliance with the Commission's Order of January 25, 2000:

1. Place in Federal Express on February 4, 2000 (for delivery on Saturday, February 5, 2000), all non-highly confidential and/or non-voluminous documents that were compelled pursuant to the Commission's Order of January 25, 2000. The documents should be sent to the following addresses:

Ms. Terry Murray
Murray & Cratty, L.L.C.
227 Palm Drive
Piedmont, California 94610

Phone: (510) 597-0334

Mr. John C. Donovan
11 Osborne Road
Garden City, New York 11530

Phone: (516) 739-3565

Laura Izon, Esq., Guest
Adams Mark Downtown Hotel
315 Chestnut Street
St. Louis, Missouri 63102

Phone: (314) 241-7400

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Paul G. Lane, Esq.
February 2, 2000
Page 2

Lisa C. Creighton, Esq.
Sonnenschein Nath & Rosenthal
4520 Main Street, Suite 1100
Kansas City, Missouri 64111

Phone: (816) 932-4461

2. Make all highly confidential and/or voluminous documents that are responsive to the Commission's Order of January 25, 2000 available at SWBT's premises in St. Louis on the morning of February 7, 2000, beginning at 8:00.

Further, please let me know as soon as possible the volume of documents that are being marked "Highly Confidential" and/or "Voluminous" which will not be reviewed until February 7, 2000.

Very truly yours,


Lisa C. Creighton

LCC/cmw

cc: William K. Haas, Esq.

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

February 3, 2000

VIA FACSIMILE (314) 247-0014

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

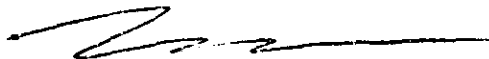
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Communications Company for Arbitration of Interconnection Rates, Terms,
Conditions and Related Arrangements With Southwestern Bell Telephone
Company
Case No. TO-2000-322*

Dear Paul:

I am writing to confirm that on February 7, 2000, all highly confidential documents and/or voluminous documents will be available to Covad for review. This would include the documents that have been previously reviewed by Covad in Kansas City, in addition to those recently compelled. Please call me if these documents will not be available.

Also, please let me know which Covad witness you want presented first on February 8, 2000.

Very truly yours,



Lisa C. Creighton

LCC/cmw

EXHIBIT B

DSL.

ENOUGH INTERNET HORSEPOWER TO WARRANT A SEATBELT ON YOUR OFFICE CHAIR.

WHAT YOU DO WITH IT IS UP TO YOU.

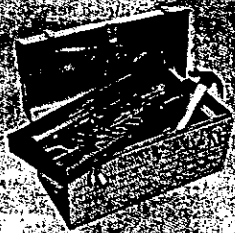
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