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January 26, 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

JAN 26 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 Response of Southwestern Bell Telephone Company to Covad Communication Company's Third Amended Notice of Deposition and Motion for Protective Order.

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

Very truly yours,

Paul G. Lane / TM

Paul G. Lane

Enclosures

cc: Attorneys of Record

FILED²

JAN 26 2000

Missouri Public
Service Commission

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

**RESPONSE OF SOUTHWESTERN BELL TELEPHONE
COMPANY TO COVAD COMMUNICATION COMPANY'S THIRD AMENDED
NOTICE OF DEPOSITIONS AND MOTION FOR PROTECTIVE ORDER**

COMES NOW Southwestern Bell Telephone Company ("SWBT") and for its response to DIECA Communications, Inc., d/b/a Covad Communications Company's ("Covad") Third Amended Notice of Deposition and Motion for Protective Order states as follows:

1. As set forth herein, SWBT objects to the depositions which were noticed for February 3, 2000 on the basis that (a) the witnesses to be deposed are scheduled to be in a Kansas arbitration hearing with Covad on that date, (b) the witnesses to be deposed are unavailable because they must prepare surrebuttal testimony in this case which is due on February 3, and (c) the deposition would unfairly impinge on SWBT's preparation for the hearing in this case which is scheduled to begin on February 8, 2000.

2. These same depositions were previously noticed for January 26, 2000, but were unilaterally cancelled by Covad. SWBT objected to the depositions on the basis that the Commission's arbitration procedures adopted on June 17, 1996 do not authorize

discovery except as the Commission expressly authorizes on a case-by-case basis, but advised the Commission that it would produce the witnesses on January 26 in order to avoid any delay in resolution.

3. On January 21, 2000, Covad unilaterally cancelled the depositions.

Covad's counsel explained that the depositions were being cancelled because of the illness of one of Covad's in-house attorneys who had entered an appearance in this case. Covad chose not to have any of the other attorneys who represent Covad in this case (of whom there are at least three) take the depositions. Covad advised that it might seek to reschedule the depositions, but did not propose any date. SWBT advised Covad's counsel that it might not agree to rescheduling, given the pendency of other proceedings and the hearing in this case.

4. SWBT did not hear further from Covad concerning this matter until it received the Third Amended Notice of Deposition by facsimile on January 25, 2000. The Notice seeks to take depositions on February 3, 2000. SWBT objects to the Third Amended Notice of Deposition and seeks a protective order on the basis that (a) SWBT's witnesses and counsel will be participants in a Kansas arbitration with Covad involving substantially the same issues which is scheduled to begin on February 1, 2000 and continue through February 3, 2000, (b) SWBT's witnesses and counsel will be involved in the preparation and filing of surrebuttal testimony in this case which the Commission has ordered to be filed on February 3, 2000 and (c) SWBT's witnesses and counsel will be involved in preparations for hearings on February 8-9, and depositions at this date would impinge on SWBT's ability to prepare this case.

5. SWBT has complied with all reasonable discovery requests in this case. It is clearly unreasonable to seek depositions on the eve of hearings, when SWBT's witnesses are involved in an arbitration hearing with Covad in another state on that date, when surrebuttal testimony is due in this case on that same date and when the hearing is scheduled only a few days later.

6. SWBT has filed a Notice of Deposition concerning all witnesses of Covad in the event the depositions of SWBT witnesses are required in this case.

WHEREFORE, for all the foregoing reasons, SWBT requests the Commission to clarify whether its arbitration procedures permit depositions and, to the extent the Commission determines its arbitration procedures do permit depositions in this case, to preclude the taking of these depositions for the reasons set forth above.

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 Airborne Express on January 26, 2000.

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