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At a session of the Public Service Commission held at its office in Jefferson City on the 24th day of February, 2000.

In the Matter of the Petition of DIECA)
Communications Inc., d/b/a Covad Communications)
Company for Arbitration of Interconnection) Case No. TO-2000-322
Rates, Terms, Conditions and Related Arrange-)
ments with Southwestern Bell Telephone Company.)

ORDER DENYING MOTION TO PARTICIPATE WITHOUT INTERVENTION

This case was initiated on November 9, 1999, when DIECA Communications Inc., d/b/a Covad Communications Company (Covad), filed its petition for arbitration with the Commission pursuant to the Telecommunications Act of 1996 (the Act). The petition asks the Commission to arbitrate open issues between Covad and Southwestern Bell Telephone Company (SWBT) to complete the terms of an interconnection agreement.

On February 14, 2000, one day prior to the start of the arbitration hearing, the Missouri Department of Economic Development (DED), acting through its in-house counsel, filed a Request to Participate Without Intervention (the "application") pursuant to 4 CSR 240-2.075(5). DED requests permission to file a brief in this proceeding, in the nature of an *amicus curiae*. The application does not state which party DED supports. At the arbitration hearing on February 15, 2000, the presiding officer directed any party wishing to respond to DED's application to do so by February 18, 2000.

The Office of the Public Counsel (Public Counsel) filed comments in support of the application on February 16, 2000. Public Counsel stated its belief that DED's responsibilities and concerns with economic development in Missouri supported its application and that DED's participation would not prejudice any party. The Staff of the Public Service Commission did not file comments in opposition or in support of DED's application.

Covad also filed comments in support of DED's application¹. Covad stated its belief that DED's application was in compliance with Commission rules, that DED's contentions were reasonable, that DED's participation as requested would not delay or impede the proceeding, and that DED's arguments would aid the Commission in the discharge of its duty to protect the public interest.

SWBT filed objections to DED's application on February 18, 2000.

SWBT raised five concerns:

1. The DED is not a person, corporation, municipality, political subdivision or public utility ("person") under 4 CSR 240-2.075 as defined in 4 CSR 240-2.010;
2. DED has failed to make a full statement of its intended position as required under 4 CSR 240-2.075(5), thus denying SWBT an opportunity to respond;
3. The application is not timely per 4 CSR 240-2.075(1) because it was not filed within 30 days of the Commission's November 29, 1999, order regarding arbitration which provided notice of this proceeding.

¹ Covad's Motion was presented to the Commission's record room after the filing deadline of 4:00 PM on Friday, February 18, 2000, and was stamped filed for the next business day, February 22, 2000. Covad faxed a letter on February 18, 2000, to all parties and to the presiding officer for this proceeding explaining the circumstances delaying its filing.

4. The Telecommunications Act of 1996 presumes an arbitration between the competitive local exchange carrier and the incumbent local exchange carrier, and not any other party. The Commission has previously held that entities not a party to the agreement cannot participate, citing PSC Case No. TO-97-40, Order Denying Intervention and Participation Without Intervention, page 2 (September 9, 1996). SWBT further stated that it was not aware of any arbitration proceeding in Missouri in which entities other than the parties, Staff (at the Commission's direction), or the Office of Public Counsel (pursuant to statute) have been permitted to participate.
5. DED is not a proper participant in this proceeding under any circumstances as the Commission itself is a part of the department and the Commission and the Staff are fully capable of considering the interests DED may have.

The Commission need not specifically address each of SWBT's concerns.

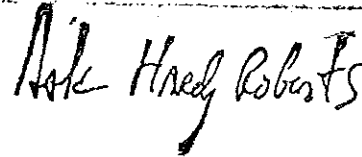
The Commission has previously addressed this issue. In Case No. TO-97-40, the Commission issued an Order Denying Intervention and Participation Without Intervention on September 6, 1996. In that case, the Commission found that under the Act, an arbitration proceeding is a continuation of the negotiation process between the requesting telecommunications carrier and the incumbent local exchange carrier to resolve open issues presented in an interconnection agreement. It is, in other words, a private contract negotiation between two parties. DED is not a party to the agreement. Therefore, the application for intervention without participation shall be denied.

IT IS THEREFORE ORDERED:

1. That the application filed by the Missouri Department of Economic Development is denied.

2. That this order shall become effective on March 7, 2000.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive style with a horizontal line above it.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, and Murray,
CC., concur.
Schemenauer, C., dissents, with
dissenting opinion attached.
Crumpton, C., not participating.

Thornburg, Regulatory Law Judge

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

Dissenting Opinion of Commissioner Robert G. Schemenauer

I respectfully dissent with my fellow Commissioners in their decision to deny the Department of Economic Development (DED) its Request to Participate Without Intervention in this Case.

Southwestern Bell Telephone Company (SWBT) has raised many specious arguments against DED's application to Participate Without Intervention, none of which are material. It appears that the Commission, by its denial of this Application, has accepted SWBT's reasons as justification for the denial without allowing a response from DED.

Additionally, the Office of the Public Counsel and Covad have filed comments in support of DED's application which have been summarily dismissed by this action.

I see no reason to deny this application. DED's filing of a Brief would not delay nor impede these proceedings nor would it prejudice any party.

For these reasons I respectfully dissent.

Respectfully submitted,



Robert G. Schemenauer
Commissioner

Dated at Jefferson City, Missouri,
on this 24th day of February 2000.