

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
July 21, 2000**

**CASE NO: TO-2001-4, ~~TO-2000-322~~**

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**Enclosed find certified copy of an ORDER in the above-numbered case(s).**

Sincerely,



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

**Uncertified Copies:**

OF THE STATE OF MISSOURI

In the Matter of the Petition of DIECA  
Communications Inc., d/b/a Covad Communications  
Company for Approval of an Interconnection  
Agreement Under the Telecommunications Act  
Of 1996.

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 Arrange- )  
ments with Southwestern Bell Telephone Company. )

## ORDER APPROVING INTERCONNECTION AGREEMENT

On July 5, 2000, DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) filed an application and an affidavit with the Commission for approval of an interconnection agreement (Agreement) with Southwestern Bell Telephone Company (SWBT). The application was assigned Case No. TO-2001-4. The Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996 (the Act). See 47 U.S.C. § 251, et seq. On July 10, 2000, Covad supplemented its filing to submit pages that were inadvertently omitted from the initial filing.

Portions of the Agreement were arbitrated before the Commission in Case No. TO-2000-322. Pursuant to the Commission's arbitration order, issued and effective March 23, 2000, Covad and SWBT were directed to submit their interconnection agreement to the Commission's Staff and subsequently

to file the Agreement with the Commission. The Commission's Staff was directed to file its recommendation within 15 days of the filing of the Agreement. This expedited review was directed in order that the Commission would have time to consider the agreement within the 30-day period allowed under Section 252(e)(4) of the federal Telecommunications Act of 1996 (the Act) for agreements or portions of agreements that have been arbitrated.

Covad states that there are no unresolved issues and that the agreement complies with Section 252(e) of the Act in that it is not discriminatory to nonparty carriers and is consistent with the public interest. Section 252(e) of the Act established standards for the Commission's review and consideration of negotiated and arbitrated interconnection agreements.

Although SWBT is a party to the Agreement, it did not join in the application submitting the Agreement. On July 11, 2000, the Commission issued an order making SWBT a party in Case No. TO-2001-4 and directing any party wishing to request a hearing to do so no later than July 19, 2000.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Staff of the Commission (Staff) filed a memorandum and recommendation on July 19, 2000, recommending that the Agreement be approved. No requests for hearing were filed. Since no one has requested a hearing, the Commission may grant the relief requested based on the application.

## Discussion

The Commission, under the provisions of Section 252(e) of the Act, has authority to approve an interconnection or resale agreement negotiated or arbitrated between an incumbent local exchange company and a new provider of basic local exchange service. The Commission may reject an interconnection or resale agreement only if the Commission finds that the agreement is discriminatory or is inconsistent with the public interest, convenience and necessity or if the arbitrated agreement does not meet the requirements of Section 251 of the Act.

The Staff memorandum recommends that the Agreement be approved, and notes that the Agreement meets the limited requirements of the Act in that it does not appear to be discriminatory toward nonparties, and does not appear to be against the public interest. Staff recommends that the Commission direct the parties to submit a final copy of the Agreement with certain corrections noted by Staff, corrected page numbers, submission of missing pages and with all the pages, including the appendices, numbered seriatim in the lower right-hand corner. Any future modifications or amendments to the Agreement should be submitted to the Commission for approval.

## Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Commission has considered the application, the supporting documentation, and Staff's recommendation. Based upon that review, the Commission concludes that the Agreement meets the requirements of the Act and that it does not unduly discriminate against a nonparty carrier, and implementation of the Agreement is not inconsistent with the public interest, convenience and necessity. The Commission finds that the parties should submit a corrected final copy of the agreement with numbered pages and finds further that approval of the Agreement should be conditioned upon the parties submitting other future modifications or amendments to the Commission for approval pursuant to the procedure set out below.

### **Modification Procedure**

The Commission has a duty to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act. 47 U.S.C. § 252. In order for the Commission's role of review and approval to be effective, the Commission must also review and approve modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection. 47 U.S.C. § 252(h). This duty is in keeping with the Commission's practice under its own rules of requiring telecommunications companies to keep their rate schedules on file with the Commission. 4 CSR 240-30.010.

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all modifications, in the Commission's offices. Any proposed modification must be submitted for Commission approval, whether the modification arises

through negotiation, arbitration, or by means of alternative dispute resolution procedures.

Modifications to an agreement must be submitted to the Staff for review. When approved, the modified pages will be substituted in the agreement, which should contain the number of the page being replaced in the lower right-hand corner. Staff will date-stamp the pages when they are inserted into the agreement. The Telecommunications Staff will maintain the official record of the original agreement and all the modifications made in the Commission's tariff room.

The Commission does not intend to conduct a full proceeding each time the parties agree to a modification. Where a proposed modification is identical to a provision that has been approved by the Commission in another agreement, the modification will be approved once Staff has verified that the provision is an approved provision, and prepared a recommendation advising approval. Where a proposed modification is not contained in another approved agreement, Staff will review the modification and its effects, and prepare a recommendation advising the Commission whether the modification should be approved. The Commission may approve the modification based on the Staff recommendation. If the Commission chooses not to approve the modification, the Commission will establish a case, give notice to interested parties and permit responses. The Commission may conduct a hearing if it is deemed necessary.

### Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission, under the provisions of Section 252(e)(1) of the federal Telecommunications Act of 1996, 47 U.S.C. 252(e)(1), is required to review negotiated or arbitrated interconnection agreements. It may only reject a negotiated agreement upon a finding that its implementation would be discriminatory to a nonparty or inconsistent with the public interest, convenience and necessity under Section 252(e)(2)(A). An agreement or portions of an agreement that have been arbitrated may only be rejected if the Commission finds that the agreement does not meet the requirements of Section 251 of the Act.

Based upon its review of the Agreement between Covad and SWBT and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and that the Commission has not found that the Agreement violates Section 251 of the Act. Therefore the Agreement should be approved.

**IT IS THEREFORE ORDERED:**

1. That the interconnection agreement between DIECA Communications, Inc. d/b/a Covad Communications Company and Southwestern Bell Telephone Company, filed on July 5, 2000, is approved.

2. That DIECA Communications, Inc. d/b/a Covad Communications Company and Southwestern Bell Telephone Company shall, within 30 days, file a corrected and final copy of their interconnection agreement making the corrections noted by Staff and with the pages, including the appendices, numbered seriatim in the lower right-hand corner.

3. That any changes or modifications to this Agreement after filing of the final Agreement shall be submitted to the Commission for approval pursuant to the procedure outlined in this order.

4. That this order shall become effective on August 1, 2000.

5. That Case No. TO-2001-4 may be closed on August 2, 2000.

**BY THE COMMISSION**

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Keith Thornburg, Regulatory Law Judge,  
by delegation of authority pursuant  
to Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 21st day of July, 2000.



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

**I have compared the preceding copy with the original on file in this office and**

**I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,  
Missouri, this 21<sup>st</sup> day of July 2000.**



*Dale Hardy Roberts*

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**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**