

FILED²

MAR 01 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

DIECA COMMUNICATIONS, INC.
D/B/A COVAD COMMUNICATIONS COMPANY'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"), and provides the following Proposed Findings of Fact and Conclusions of Law:

PROPOSED FINDINGS OF FACTS AND LAW

1. Section 252(b)(1) of the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), provides that "during the period from the 135th day to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues." 47 U.S.C. § 252(b)(1)

2. DIECA Communications Inc. D/B/A Covad Communications Company (Covad") is a carrier for purposes of Section 252 of the Act.

3. Southwestern Bell Telephone Company ("SWBT") is an incumbent local exchange carrier for purposes of Section 252 of the Act.

88

4. Covad's arbitration petition was timely filed, in that it was filed more than 134 days and less than 161 days after Covad requested access to Unbundled Network Elements from SWBT on June 23, 1999.

5. Section 252(b)(4)(C) of the Act provides that:

[t]he State Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection(c) upon the parties to the agreement and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

47 U.S.C. § 252(b)(4)(c). SWBT received Covad's request on June 23, 1999 and therefore the Commission must act to resolve this arbitration no later than March 23, 2000.

6. Section 252(c) of the Act provides that "[i]n resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State Commission shall - . . . (2) establish any rates for interconnection services, or network elements according to subsection (d). 47 U.S.C. § 252(c)

7. Section 252(d) of the Act provides that:

[d]eterminations by a State Commission of the just and reasonable rate for . . . network elements for purposes of subsection (c)(3) of such section -

(A) shall be-

- (i) based on cost (determined without reference to a rate of return or other rate based proceeding) of providing the . . . network element . . . and
- (ii) nondiscriminatory and

(B) may include a reasonable profit.

47 U.S.C. § 252(d)

8. The applicable basis for determining prices in this proceeding is TELRIC, or Total Element Long Run Incremental Cost. 47 C.F.R. § 51.505(b)(1)

Issue A(3)- Loop Qualification

9. SWBT's "loop qualification" process does not "qualify" loops. Instead, SWBT is merely providing loop makeup information to Covad. This information tells Covad whether the loop in question is burdened by interferors such as loop coils, bridged taps, and repeaters.

10. SWBT's current automated OSS systems already contain the loop makeup information Covad requires.

11. Further, an efficient forward-looking network, as required by TELRIC, would be totally automated. Finally, Project Pronto, which SWBT's affiliate is presently implementing throughout SWBT's service territory, including Missouri, eliminates the need for any form of loop qualification.

12. The record does not support a charge for loop qualification, as SWBT should provide loop qualification through an entirely automated process.

Issue A(3) - Alternate Proposed Findings, Set One

13. The record establishes that Project Pronto will reduce the percentage of loops that need manual loop qualification during year 2000. The reduction supports a SWBT loop qualification non-recurring charge of only the amount identified by Ms. Terry Murray at page 7 of the highly confidential version of her surrebuttal testimony. Therefore, SWBT loop

nonrecurring charge will be set at the price identified by Ms. Murray on page 7 of the highly confidential version of her surrebuttal testimony.

Issue A-3 - Alternate Proposed Findings, Set Two

14. The record establishes that SWBT's cost study improperly includes costs for a dismantled spectrum management program. As a result, a clerk or drafter, and not an engineer, should provide the loop makeup information.

15. Covad has established that when the engineer time is factored out of SWBT cost studies, the appropriate SWBT loop qualification non-recurring charge should be reduced to the amount identified by Ms. Murray on pages 26-27 of her direct testimony.

Issue A(6)-Conditioning Charges

16. In October 1999, SBC announced Project Pronto, a \$6 billion initiative that revises SBC's network. Project Pronto is an efficient forward looking network that eliminates costs for loop qualification and conditioning on a forward looking basis.

17. Since 1980, both the industry and SWBT's own engineering guidelines and policies have required SWBT to deploy 100% non-loaded loops and limited bridged tap to support digital services like ISDN. Loops over 20 years old have survived past their expected useful lives, and SWBT has more than fully recovered the cost of those loops. As a consequence, SWBT has recovered the costs of modernizing plant from Missouri ratepayers. SWBT has already been compensated for deploying non-loaded loops and loops with limited bridged taps.

18. SWBT's recurring loop charges are based on a modern forward-looking plant that is free of load coils and with limited bridged taps.

19. SWBT may not base non-recurring charges on different network assumptions than it uses as the assumptions for its recurring charges.

20. SWBT may not charge a surcharge or premium for a functional loop. According to 47 C.F.R § 51.319(a)(1), conditioning is already included in the functionality of the loop; thus, SWBT is not entitled an additional non-recurring charge for conditioning.

21. SWBT may not charge additional non-recurring conditioning costs.

Issue A(6) - Alternate Proposed Findings

22. Load coils should not be found on SWBT loops shorter than 18,000 feet.

23. Efficient engineering practices require SWBT to condition (or deload) entire binder groups (50 loops) together.

24. Deloading entire binder groups at the same time reduces reentry into outside plant splices which in turn assists in maintaining the integrity of the cable.

25. Removing load coils from entire binder groups improves the plant for analog modems and future DSL applications.

26. Covad witness John Donovan is an expert in the area of outside plant. In his testimony he provided reasonable task times for conditioning loops. SWBT's witnesses did not prepare SWBT's proposed cost study, nor were they familiar with the actual activities that were the subject of the cost study, including the tasks or time necessary to perform loop conditioning. Therefore, SWBT did not provide meaningful foundation for its study.

27. SWBT shall charge a non-recurring fee of \$5.77 to remove load coils from a loop. SWBT shall charge a non-recurring fee of \$1.07 to remove bridged tap from a loop. SWBT shall charge a non-recurring fee of \$1.37 to remove repeaters from a loop.

Issue A(7)-DSL Loop Charges

28. Project Pronto is an efficient forward-looking network based on modern next generation DLCs.

29. SWBT's ISDN loop cost study is based on network containing older DISC*S DLCs and "BRITE" card equipment.

30. SWBT's ISDN loop cost study uses equipment prices from 1996. The price of this equipment has decreased significantly since 1996.

31. ISDN loop prices in other states are significantly lower than the rates SWBT proposes in Missouri.

32. SWBT should rerun its ISDN loop cost study using the price of current equipment in an efficient forward-looking network. Until then, SWBT will charge an interim recurring rate of \$17.54 in Zone 1, \$28.58 in Zone 2, \$45.94 in Zone 3 and \$25.15 in Zone 4.

Issue A(8) – Cross Connect Charges

33. SWBT's non-recurring cost studies for cross connect charges do not support the rates proposed in the arbitration.

34. Covad has not had an opportunity to meaningfully scrutinize the basis for the rates proposed by SWBT.

35. As a consequence of its failure to provide adequate cost study support for its proposed cross connect charges, SWBT should rerun its studies and provide the results to the Commission and to Covad, to allow for adequate review and determination of appropriate cross connect charges.

Issue B - Unilateral, Substantive Modifications to SWBT's Technical Publications

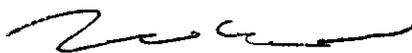
36. SWBT has previously unilaterally imposed its spectrum management policy on Covad in Texas through the use of technical publications. Both the FCC and the Texas Public Utilities Commission found that policy to be anticompetitive, and SWB has recently withdrawn that policy.

37. Covad is appropriately concerned that SWBT could unilaterally reinforce its discredited spectrum management policy through unilateral and substantive changes in its technical publications. Due to their incorporation by reference into the SWBT-Covad interconnection agreement, SWBT could make unilateral changes in the substance of the interconnection agreement by revising its technical publications.

38. Any substantive changes SWBT unilaterally makes to its technical publications after the date of conclusion of the interconnection agreement will not be considered part of the interconnection agreement and will not bind Covad.

WHEREFORE, DIECA Communications, Inc. d/b/a Covad Communications Company, respectfully requests the Commission issue an Order adopting the above Findings of Facts and Conclusions of Law.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was transmitted via federal express, postage prepaid, this 1st day of March, 2000, to:

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