SONNENSCHEIN NATH & ROSENTHAL

4520 MAIN STREET SUITE 1100

KANSAS CITY, MISSOURI 64111

(816) 932-4400
FACSIMILE
(816) 531-7545

Lisa C. Creighton
(816) 932-4461
lcc@sonnenschein.com

January 10, 2000

VIA HAND DELIVERY

FILED[2]
JAN 11 2000
Missouri Public Service Commission

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

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:

Covad submits for filing with the Commission the original and (14) copies of (1) Covad's Reply to Southwestern Bell Telephone Company's Response to Covad's Motion to Compel and (2) Covad's Request for Depositions. Also submitted is one additional copy of these documents which I would ask that you return at the time of filing marked "filed." By copy of this letter, two copies of these documents have been sent to the Office of Public Counsel and one copy to the Office of General Counsel. If you should have any question, please do not hesitate to contact me.

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

Very truly yours,

Lisa C. Creighton /tm

Lisa C. Creighton

LCC/T2M
Enclosures

cc: Office of Public Counsel
Office of General Counsel
Paul Lane, Esq.

21033912\V-1

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED[2]
JAN 11 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

REQUEST FOR DEPOSITIONS

COMES NOW DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") and hereby requests that it be allowed to take the depositions of Southwestern Bell Telephone Company's ("SWBT's") cost witness and outside plant witness on January 18, 2000, in St. Louis, Missouri. In support of this request, Covad states as follows:

1. Covad filed its Petition for Arbitration on November 9, 1999. On the same date, Covad filed a petition seeking arbitration of the exact same issues before the Kansas Corporation Commission. *See In the Matter of Petition of DIECA Communications, Inc. d/b/a/ Covad Communications Company for Arbitration of Interconnection rates and Related Arrangements with Southwestern Bell Telephone Company,* Docket No. 00-DCITT-389-ARB. Many of the issues in both these arbitrations were recently arbitrated in Texas. *See Petition of DIECA Communications, Inc. d/b/a/ Covad Communications Company for Arbitration of Interconnection rates and Related Arrangements with Southwestern Bell Telephone Company,* Docket No. 20272.

2. Based on Covad's experience with discovery in Texas, Covad anticipated that depositions would likely be necessary in connection with the Kansas and Missouri arbitrations. Therefore, shortly after the filing of the Petitions for Arbitration, Covad notified SWBT that it would likely request depositions. Thereafter, several discussions about depositions took place

among Covad's counsel and SWBT's Missouri and Kansas counsels. In the course of these discussions, Covad informed SWBT that it wanted to take the depositions of SWBT's cost witness and outside plant witness.

3. On January 5, 2000, counsel for SWBT in Kansas agreed to produce for depositions SWBT's cost witness and an outside plant witness in the Kansas arbitration. These witnesses are being made available for depositions on January 18, 2000, at SWBT's St. Louis, Missouri offices. *See* Exhibit A (e-mail from Bruce Nye, SWBT's Kansas counsel).

4. In this motion, Covad seeks the ability to take the deposition of SWBT's Missouri cost and outside plant witnesses on January 18, 2000. As with Kansas, (similar to Covad's experience with SWBT in the Texas arbitration), the lack of details substantiating SWBT's Missouri cost studies renders depositions necessary in this arbitration. Covad fully expects that the witnesses SWBT has already agreed to produce on January 18, 2000 in the Kansas arbitration will be able to answer questions relating to Missouri cost and outside plant related issues, thereby eliminating any additional burden on SWBT by this request.[1] Indeed, SWBT's pre-filed direct testimony in Missouri and Kansas indicates that cost and outside plant related issues are being addressed by the same SWBT witnesses—the exact same SWBT witnesses have filed direct testimony in the Missouri and Kansas arbitrations. *See* Exhibit B (letters dated January 7, 2000,

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[1] If SWBT believes that separate cost and outside plant deposition witnesses are necessary for Kansas and Missouri, the burden associated with this decision is caused by SWBT itself, not Covad. The exact same SWBT witnesses have filed direct testimony in the Kansas and Missouri arbitrations. *See* Exhibit C (letters dated January 7, 2000, from SWBT's counsel to Kansas and Missouri Commissions). There is absolutely no reason why SWBT cannot designate deposition witnesses on January 18, 2000 that are capable of answering questions relating to both Kansas and Missouri cost and outside plant related issues. If SWBT believes that separate Kansas and Missouri deposition witnesses are necessary, counsel for Covad is prepared to depose both the Kansas and Missouri cost and outside plant witnesses on January 18, 2000, at SWBT's offices in St. Louis, Missouri.

from SWBT's counsel to Kansas and Missouri Commissions). This is not surprising given that the issues in the Kansas and Missouri arbitrations are the same.

5. The Commission's arbitration procedures state that arbitrations are to be conducted similar to current contested case procedures and the question of whether *additional discovery* will be allowed is decided on a case-by-case basis. *See* ARBITRATION PROCEDURES, June 17, 1996, at 2. The Commission's Practice and Procedure Rules specifically provide that depositions upon oral examination may by used by any party, in any proceeding before the commission, to obtain discovery. *See* PUBLIC SERVICE COMMISSION, PRACTICE AND PROCEDURE, 4 C.S.R. § 240-2.090(1)—Discovery and Prehearings. As demonstrated above, the use of depositions in this arbitration is necessary.

WHEREFORE, Covad requests that this Commission grant its request to depose SWBT's cost witness and outside plant witness on January 18, 2000, in St. Louis, Missouri.

Respectfully submitted,

Lisa C. Creighton /lm

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 mailed, postage prepaid, this 10th day of January, 2000, to:

Paul Lane, Esq.
Southwestern Bell Telephone
One Bell Central, Room 3536
St. Louis, Missouri 63101

Office of the Public Counsel
P. O. Box 7800
Jefferson City, Missouri 65102

Office of General Counsel
ATTN: Bill Haas
P. O. Box 360
Jefferson City, Missouri 65102

Lisa C. Creighton /rm
Attorney for DIECA Communications, Inc.
d/b/a Covad Communications Company

From: "NEY. BRUCE A (Legal)" <bn7429@ksmail.sbc.com> AT INTERNET on 01/04/2000 06:19 PM

To: Lisa C. Creighton/KCM/SNR, lizon@covad.com AT INTERNET@ccMail
cc: m.deagle@kcc.state.ks.us AT INTERNET@ccMail, b.lehr@kcc.state.ks.us AT INTERNET@ccMail, "LANE. PAUL G (Legal)" <pl6594@momail.sbc.com> AT INTERNET@ccMail
Subject: RE:

Both of SWBT's deposition witnesses, cost and outside plant, will be available on Tuesday, January 18, 2000 at SWBT's St. Louis offices. We can begin This should save you travel time. Please let me know what time you want to convene.

Bruce A. Ney
Attorney
Telephone: 785-276-8435
FAX: 785-276-1948

-----Original Message-----
From: lisa_c._creighton@sonnenschein.com
[mailto:lisa_c._creighton@sonnenschein.com]
Sent: Tuesday, January 04, 2000 9:23 AM
To: NEY, BRUCE A (Legal); mdeagle@kcc.state.ks.us
Cc: lizon@covad.com
Subject:

Bruce,

There are several issues we need to resolve ASAP. As you know, our deadline for filing direct is Friday. First, Covad needs the production of both the non-recurring and recurring cost studies for ISDN unbundled loops. Your response to Data Request 1-6 indicates that you will produce the non-recurring cost study. However Covad has not received it. Please fax it immediately to Laura Izon. With respect to the recurring cost study, I know it is SWBT's legal position that this cost was decided earlier by the Commission and can never be challenged again. However, Covad disagrees with SWBT's position and has placed the recurring cost for ISDN unbundled loops in issue in this arbitration. Therefore, you have no ability to withhold the requested information. While SWBT filed a motion to limit issues in this arbitration, it is not within SWBT's power to declare itself victorious and avoid lawful and legitimate discovery. Therefore, please fax the recurring cost study to Laura Izon no later than 12:00 p.m. today (January 4, 2000).

Second, Covad needs immediate confirmation of the dates for depositions of a SWBT cost person and outside plant person. In light of the lack of details allegedly supporting many of SWBT's proposed costs, it is absolutely necessary to conduct these depositions. Please confirm in writing that witnesses will be available on January 17 and 18, 2000 in ST.

Louis or Dallas. Further, if SWBT plans on taking depositions, Covad needs to know immediately who SWBT wants to depose.

While there are many other outstanding discovery issues between SWBT and Covad, most of which are subject to Covad's Motion to Compel, the above two issues need to be resolved immediately. Therefore, I have reserved time with the Arbitrator (Bob Lehr) today at 3:00 so that we can have some resolution to these issues. I will initiate the call. Please call me before hand so that we can discuss these issues.

Lisa Creighton

 - ENVELOPE.TXT

Bruce A. Ney
Attorney
Legal

Southwestern Bell Telephone
220 SE 6th Street, Room 515
Topeka, Kansas 66603-3596
Phone 785 276-8435
Fax 785 276-1948

Southwestern Bell

January 7, 2000

Jeffrey S. Wagaman
Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604

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, Docket No. 00-DCIT-389-ARB

Dear Mr. Wagaman:

Enclosed for filing are the original and seven copies of Prefiled Direct Testimony of James R. Smallwood, John P. Lube, and Jerrod C. Latham on behalf of Southwestern Bell Telephone Company.

Southwestern Bell considers portions of Mr. Smallwood's testimony to be proprietary. His testimony is being filed under seal pursuant to the terms and conditions of the Protective Order dated January 8, 1998, in this docket and under the terms of K.S.A. 66-1220a.

Very truly yours,

Bruce A. Ney
Attorney

Enclosures

cc: Parties of Record

EXHIBIT B

Paul G. Lane
General Counsel-
Missouri

Southwestern Bell Telephone
One Bell Center, Room 3520
St. Louis, Missouri 63101
Phone 314 235-4300
Fax 314 247-0014

Southwestern Bell

January 7, 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

Re: Case No. TO-2000-322

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-captioned case, are an original and 14 copies of the Direct Testimony for the following Southwestern Bell Telephone Company witnesses:

John P. Lube
Jerrod C. Latham

Also enclosed for filing with the Commission are an original and eight redacted (NP) copies, and an original and eight copies of the Highly Confidential version of the Direct Testimony for Southwestern Bell witness James R. Smallwood. As required by the Protective Order issued in this case, we are filing the HC copies of Mr. Smallwood's Direct Testimony under seal.

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