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March 1, 2000

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FILED²
MAR 01 2000
Missouri Public
Service Commission

RE: Case No. TO-2000-322

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of the **STAFF'S INITIAL BRIEF AND PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

William K. Haas
Deputy General Counsel
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WKH/lb
Enclosure
cc: Counsel of Record

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

In the Matter of the Petition of DIECA)
Communication, 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

FILED²

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Missouri Public
Service Commission

STAFF'S INITIAL BRIEF

AND

PROPOSED FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

Introduction

On November 9, 1999, DIECA Communications Inc. d/b/a Covad Communications Company (Covad) filed its petition for arbitration with the Missouri Public Service Commission (Commission) pursuant to the Telecommunications Act of 1996 and Section 386.230 RSMo 1994. The petition asks the Commission to arbitrate open issues with Southwestern Bell Telephone Company (SWBT). On December 6, 1999, SWBT filed its answer to the petition.

On December 27, 1999, the Commission issued an Order which, *inter alia*, adopted a procedural schedule proposed by the parties (which included the filing of one round of briefs), and further directed each party to submit proposed findings of facts, conclusions of law and ordered paragraphs.

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On January 5, 2000, Covad and SWBT filed a Joint Issue Statement which identified five issues to be arbitrated.

On January 7, 2000, Covad filed the Direct Testimony of John C. Donovan, Terry L. Murray and Bernard Chao; and SWBT filed the Direct Testimony of Jerrod C. Latham, John P. Lube and James R. Smallwood. On January 28, 2000, Covad filed the Rebuttal Testimony of Mr. Donovan, Ms. Murray and Mr. Chao; SWBT filed the Rebuttal Testimony of David Borders and of Messrs. Latham, Lube and Smallwood; and the Staff filed the Rebuttal Testimony of Myron E. Couch, Anthony S. Clark and Shawnee Claiborn-Pinto.

On February 3, 2000, the Commission granted Covad's motion to amend the procedural schedule. On February 10, 2000, Covad filed the Surrebuttal Testimony of Mr. Donovan and Ms. Murray; and SWBT filed the Surrebuttal Testimony of Messrs. Borders, Latham, Lube and Smallwood.

The Staff's Brief will address the five issues in the sequence listed in the Joint Issue Statement.

Argument

Issue A (3)-Loop Qualification

Should SWBT be allowed to charge for loop qualification and, if so, what is the appropriate price?

Yes. The Staff's recommended interim price for loop qualification is \$13.00.

Loop qualification is SWBT's review of its records to determine the suitability of a loop for xDSL services. The Staff agrees with SWBT that an engineer should do this work. (Couch Rebuttal, Exh. 25, p. 3). The Staff's calculation of a recommended charge began with SWBT's

cost studies. Then the Staff removed the joint and common costs from SWBT's non-recurring charges for loop qualification.

It is improper to apply the joint and common cost factor to these non-recurring charges. A non-recurring charge is the result of a one-time event, and is calculated using loaded labor rates. All the costs incurred in that one-time event are recovered in the loaded labor rates. The joint and common costs are fully recovered in the recurring rates for the elements. Applying the joint and common cost allocation to the non-recurring charges would result in over recovery by SWBT. Further, in Case Nos. TO-97-40 (AT&T and SWBT Arbitration) and TO-98-155 (AT&T and SWBT Second Arbitration) the Commission did not approve, nor did the Arbitration Advisory Staff recommend, the recovery of joint and common costs in non-recurring unbundled network element (UNE) charges. (Clark Rebuttal, Exh. 23, p. 4).

SWBT has stated that electronic access to mechanized loop qualification information based upon a designed model will be available not later than July 2000. Electronic access to actual information, where such information exists in a mechanized inventory, will be available by the end of 2000; for those loops where actual information is not available on a mechanized basis, information from the designed model will be supplied. (Lube Rebuttal, Exh. 21, p. 8).

It is of crucial importance to the advanced services market in Missouri that Covad and other competitive DSL providers have nondiscriminatory, real-time electronic access to SWBT's loop makeup information and xDSL ordering. In the Texas Arbitration Award, the arbitrator ordered SWBT to develop and deploy enhancements to its existing Datagate and EDI interfaces that will allow CLECs (as well as SWBT's retail operations or its advanced service subsidiary) to have real-time electronic access as a preordering function to SWBT's loop make-up information. This information is to include (a) the actual loop length; (b) the length by gauge;

and (c) the presence of repeaters, load coils, or bridged taps; and shall include, if noted on the individual loop record, (d) the approximate location, type and number of bridged taps, load coils, and repeaters; (e) the presence, location, type and number of pair-gain devices, DLC, and/or DAML, and (f) the presence of disturbers in the same and/or adjacent binder groups. The Texas arbitrator also found that SWBT should provide to the CLEC any other relevant information listed on the individual loop record but not listed above. (Clark Rebuttal, Exh. 23, p. 4-5).

The Texas arbitrator ordered SWBT to develop and deploy these enhancements as soon as possible but not to exceed six months from the award. Additionally, the Texas arbitrator ordered SWBT to develop and deploy enhancements to its existing Datagate and EDI interfaces to allow for ordering xDSL and other advanced services as soon as possible, but not to exceed six months from the award. (Clark Rebuttal, Exh. 23, p. 5).

The Staff recommends that the Commission order SWBT to develop and to deploy these enhancements as soon as possible but no later than July 2000. (Clark Rebuttal, Exh. 23, p. 5).

The Staff's proposed price for loop qualification is \$13.00. (Claiborn-Pinto Rebuttal, Exh. 24, p. 3). However, SWBT should no longer charge for loop qualification after the process has been mechanized. (Clark Rebuttal, Exh. 23, p. 6).

Issue A (6)-Conditioning Charges

Should SWBT be permitted to charge for xDSL loop conditioning and, if so, what is the appropriate price?

The Staff agrees that SWBT should be allowed to charge for conditioning loops, but not at the prices SWBT has proposed.

Loop conditioning is the process of preparing a loop for xDSL services by removing three types of devices—load coils, bridged taps, and digital repeaters—that interfere with the proper operation of xDSL. The Staff has made appropriate adjustments to SWBT's cost studies.

The Staff witness, who has experience on outside plant facilities in SWBT's St. Louis service area, explained that SWBT's estimates of the time needed to perform loop conditioning are high. The Staff estimates that a cable splicer will need 120 minutes, on average, to perform the various tasks to remove a load coil. The Staff estimates that removing a second load coil from a different cable in the same closure would require another 30 minutes. The Staff estimates that a splicer would need two hours, on average to perform the various tasks to remove a bridged tap, and an additional 30 minutes, on average to remove a second bridged tap from another cable within the same enclosure. (Couch Rebuttal, Exh. 25, p. 6).

SWBT has suggested that the charge for loop conditioning should include restoration of a bridged tap when service reverts from xDSL to POTS (plain old telephone service). The Staff disagrees. Once a bridged tap is removed, there is no reason to restore it since that loop is now dedicated to a specific location. (Couch Rebuttal, Exh. 25, p. 8).

The Staff has also removed the joint and common costs from SWBT's conditioning charges for the reasons discussed above in Issue A (3). (Clark Rebuttal, Exh. 23, p. 8-9).

SWBT has previously informed the Staff that only three to five percent of the loops in its network between 12,000 and 17,500 feet would require conditioning for xDSL services to be deployed. At the hearing, however, SWBT's witness identified a back-up document to its cost study which shows estimates that, on average, load coils would need to be removed 2 percent of the time, bridged tap would need to be removed 6 percent of the time, and repeaters would need to be removed .6 percent of the time. (Smallwood, Tr. 289-91).

The Staff recommends that SWBT be limited to charging Covad for conditioning a maximum of four of every 100 loops between 12,000 and 17,5000 feet that Covad orders from SWBT. This limit will enable Covad (and other competitors) to proceed with a business plan in Missouri. (Clark, Exh. 23, p. 9-10).

Also, the Staff's proposed prices eliminate the 19.2 percent wholesale discount which the Commission ordered in Case No. TO-99-370 (Broadspan and SWBT Arbitration). Since the Staff has re-addressed SWBT's "costs" in the current case, the Staff did not discount the proposed "prices." (Claiborn-Pinto Rebuttal, Exh. 24, p. 5).

Issue A (7)-xDSL Loop Charges

What are the appropriate recurring and non-recurring charges for ISDN loops?

The Staff recommends the adoption of the rates that were established in Case No. TO-97-40 (AT&T and SWBT Arbitration). These rates include the equipment necessary to provision ISDN. (Clark Rebuttal, Exh. 23, p. 13-15).

Issue A (8)-Cross Connect Charges

What are the appropriate recurring and non-recurring charges for shielded and non-shielded cross connects?

For non-shielded cross connects Staff recommends adoption of the rates that were established by the Commission in Case No. TO-97-40 (AT&T and SWBT Arbitration). For shielded cross connects Staff recommends adoption of the rates that were established by the Commission in Case No. TO-99-370 (Broadspan Communications, Inc., and SWBT Arbitration). (Clark Rebuttal, Exh. 23, p. 15-18).

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

Should SWBT have the ability to make unilateral substantive changes to its technical publications?

Any technical publications issued after the agreement has been approved should not change the agreement.

Staff recognizes that change is inevitable and looking down the road to the future it is impossible to predict when and where those changes will occur. However, if SWBT encounters a change that makes existing agreements obsolete, SWBT can renegotiate with Covad or failing that, can bring the disagreement back to the Commission for arbitration. However, Staff does not anticipate that there will be changes to the technical publications that would violate the approved agreement. (Couch Rebuttal, Exh. 25, p. 8-10).

Proposed Findings of Fact, Conclusions of Law and Order

Findings of Fact

1. Covad and SWBT are telecommunications companies as defined in Section 386.020 RSMo Supp. 1999.

2. Issue A (3)-Loop Qualification

The Commission adopts an interim charge for loop qualification of \$13.00. The Commission adopts the Staff's recommendation to remove joint and common costs. The Commission finds that it is improper to apply the joint and common cost factor to these non-recurring charges. A non-recurring charge is the result of a one-time event, and is calculated

using loaded labor rates. All the costs incurred in that one-time event are recovered in the loaded labor rates. The joint and common costs are fully recovered in the recurring rates for the elements. Applying the joint and common costs allocation to the non-recurring charges would result in over recovery of costs by SWBT.

The Commission finds that it is of crucial importance to the advanced services market in Missouri that Covad and other competitive DSL providers have nondiscriminatory, real-time electronic access to SWBT's loop makeup information and xDSL ordering. Therefore, the Commission will order SWBT to develop and deploy enhancements to its existing Datagate and EDI interfaces that will allow CLECs (as well as SWBT's retail operations or its advanced service subsidiary, to have real-time electronic access as a pre-ordering function to SWBT's loop makeup information. This information is to include (a) the actual loop length; (b) the length by gauge, (c) the presence of repeaters, load coils, or bridged taps; and shall include, if noted on the individual loop record, (d) the approximate location, type, and number of bridged taps, load coils, and repeaters; (e) the presence, location, type and number of pair-gain devices, DLC and/or DAML, and (f) the presence of disturbers in the same and/or adjacent binder groups.

After the process has been mechanized, SWBT will no longer be allowed to charge for loop qualifications.

3. Issue A (6)-Conditioning Charges

The Commission adopts the Staff's proposed modifications to SWBT's cost studies. The Commission finds that a cable splicer will need 120 minutes, on average to remove a load coil, and an additional 30 minutes, on average to remove a second load coil from a different cable in the same closure. The Commission finds that a splicer would need two hours, on average to

remove a bridged tap, and an additional 30 minutes, on average, to remove a second bridged tap from another cable within the same enclosure.

The Commission finds that the charge for loop conditioning should not include restoration of a bridged tap when service reverts from xDSL to POTS (plain old telephone service). The Commission finds that once a bridged tap is removed, there is no reason to restore it since that loop is now dedicated to a specific location.

The Commission finds that it is appropriate to remove the joint and common costs from SWBT's conditioning charges for the reasons stated above.

The Commission finds that it is appropriate to limit the number of loops for which SWBT may charge Covad for conditioning. A limit will enable Covad (and other competitors) to proceed with a business plan in Missouri. The Commission finds that a limit of four loops out of 100 between 12,000 and 17,500 feet is reasonable because SWBT has stated that only 3 to 5 percent of the loops of that length in its network would require conditioning for xDSL services to be deployed.

The Commission also adopts the Staff's proposed elimination of the 19.2 percent wholesale discount. Because the Commission has re-addressed SWBT's costs in the current case, it is not appropriate to discount the proposed prices.

4. Issue A (7)-xDSL Loop Charges

The Commission adopts the rates for recurring and non-recurring charges for ISDN loops that were established in Case No. TO-97-40 (AT&T and SWBT Arbitration). The Commission finds that these rates include the equipment necessary to provision ISDN. Covad has failed to persuade the Commission that these rates are no longer correct.

5. Issue A (8)-Cross Connect Charges

The Commission adopts the rates that were established by the Commission in Case No. TO-97-40 (AT&T and SWBT Arbitration) for non-shielded cross connects. The Commission adopts the rates that were established in Case No. TO-99-370 (Broadspan Communications, Inc., and SWBT Arbitration) for shielded cross connects. Covad has failed to persuade the Commission that these rates are no longer correct.

6. For the reasons stated above, the Commission adopts all of the Staff's proposed prices as shown on Appendix A which is attached hereto and incorporated by reference.

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

Technical Publications are documents prepared by SBC that provides technical descriptions and specifications for technologies and equipment used in SWBT's network.

The Commission finds that it is reasonable and necessary to allow SWBT to amend its technical publications, and to apply those amendments to Covad, where the amendments are required by the actions of Missouri or federal legislative bodies, courts or regulatory agencies. The Commission finds that it is reasonable to allow SWBT to amend its technical publications for other reasons; however, those changes will not be allowed to change the existing interconnection agreement without further negotiations or arbitration.

Conclusions of Law

1. The Commission has jurisdiction over Covad and SWBT pursuant to Chapters 386 and 392, RSMo.
2. The Commission has jurisdiction over this arbitration pursuant to 47 U.S.C. §§ 251 and 252.

IT IS THEREFORE ORDERED:

1. Covad and SWBT shall prepare and submit to the Commission for its approval an interconnection agreement which complies with the Commission's Findings of Fact.
2. SWBT shall develop and deploy as soon as possible but no later than July 31, 2000, the enhancements to its Datagate and EDI interfaces as described in the Commission's Findings of Fact.

Staff Proposed Loop Conditioning Prices

<u>Loops between 12 and 17.5 Kft</u>	<u>Initial</u>	<u>Additional Same Location/Cable</u>	<u>Additional Same Location Different Cable</u>
Removal of Load Coils	\$499.06	\$19.76	\$97.24
Removal of Bridged Taps	\$382.84	\$19.76	\$68.19
Removal of Repeaters	\$191.42	\$14.72	\$34.09
Removal Bridge Tap & Load Coil	\$849.33	\$39.53	\$165.43
Removal Bridge Tap & Repeater	\$541.69	\$34.49	\$102.28

<u>Loops over 17.5 Kft *</u>	<u>Initial</u>	<u>Additional Same Location/Cable</u>	<u>Additional Same Location Different Cable</u>
Removal of Load Coils	\$166.35	\$6.26	\$32.41
Removal of Bridged Taps	\$191.42	\$9.88	\$34.09
Removal of Repeaters	\$191.42	\$14.72	\$34.09
Removal Bridge Tap & Load Coil	\$344.20	\$16.15	\$66.51
Removal Bridge Tap & Repeater	\$358.42	\$24.61	\$68.19

* These charges apply in addition to the charge above (loops between 12 and 17.5Kft).

Staff Proposed ISDN BRI Prices

	<u>Zone 1</u>	<u>Zone 2</u>	<u>Zone 3</u>	<u>Zone 4</u>
ISDN-BRI Loop	\$25.79	\$42.10	\$58.44	\$41.44

<u>ISDN-BRI Loop Installation</u>	<u>NRC</u>
Initial (All Zones)	\$57.77
Additional (All Zones)	\$30.22

Staff Proposed Cross Connect Prices

<u>Non-shielded Cross Connects</u>	<u>Monthly Recurring</u>	<u>NRC Initial</u>	<u>NRC Additional</u>
2-Wire Analog (w/o testing)	\$0.31	\$19.96	\$12.69
2-Wire Digital (w/o testing)	\$0.31	\$35.83	\$29.44
4-Wire Analog (w/o testing)	\$0.63	\$19.96	\$12.69
2-Wire Digital (with testing)	\$1.89	\$25.38	\$17.73

Shielded Cross Connect

Staff Proposed Price

Monthly recurring	\$0.80
Installation, Initial	\$19.96
Installation, Additional	\$12.69

Loop Qualification

Staff Proposed Price

Per loop	\$13.00
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Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 1st day of March 2000.

Wm K Haas

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