

APPENDIX L

**Docket Number 11650-U, Order Adopting the
Hearing Officer's Decision DIECA
Communications, Inc. d/b/a Covad
Communications Company's Complaint Against
BellSouth**

COMMISSIONERS:

STAN WISE, CHAIRMAN
ROBERT S. BAKER, JR.
DAVID L. BURGESS
BOB DURDEN
LAUREN "BUBBA" McDONALD, JR.



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DEC 28 1999

EXECUTIVE SECRETARY
G.P.S.C.

DOCKET NO. 11650-U

In Re: **DIECA Communications, Inc. d/b/a Covad Communications Company's
Complaint Against BellSouth Alleging that BellSouth Has Breached Its
Interconnection Agreement By Refusing to Provision ISDN Loops Over
Which Covad Provides IDSL Services**

ORDER

This matter comes before the Commission with a Recommended Decision from the Hearing Officer on a complaint filed by DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) against BellSouth Telecommunications, Inc. (BellSouth) alleging that BellSouth had breached its Interconnection Agreement with Covad. After reviewing the Hearing Officer's Recommended Decision, and after considering the applicable laws, rules, and orders, and the record in this matter, the Commission hereby adopts the Hearing Officer's Recommended Decision as its own and hereby finds, concludes and decides as follows:

BACKGROUND

On December 9, 1999, Covad filed a complaint against BellSouth alleging that BellSouth had breached its Interconnection Agreement by refusing to provision ISDN loops over which Covad provides IDSL services. This matter was assigned to a Hearing Officer to make a recommended decision to the Commission.

On December 14, 1999, this matter came before the Hearing Officer for a preliminary hearing pursuant to the December 10, 1999 Order Designating Hearing Officer for Expedited Preliminary Hearing and Hearing; Procedural and Scheduling Order (Pre-hearing Order). At this preliminary hearing, the Hearing Officer found and concluded as follows:

a.

Both DIECA Communications, Inc. d/b/a Covad Communications Company (COVAD) and BellSouth Telecommunications, Inc. (BellSouth) agree that the complaint is properly before the Commission for resolution. The Hearing Officer hereby finds that this matter is properly before the Commission.

b.

No other parties have requested intervention in this matter. Accordingly, there is no need for any action by the Hearing Officer on this issue.

c.

COVAD has requested that immediate relief be granted requiring BellSouth to continue providing ISDN loops which are capable of providing IDSL service. Based on the limited presentation at the Pre-hearing, it appears that some of the ISDN loops that BellSouth provides to COVAD are capable of providing IDSL service, but some are not. In particular, it appears that the ISDN loops provisioned on copper are capable of providing IDSL. In some case, the ISDN loops not provisioned on copper are not capable of providing IDSL. Some work would be necessary to make these loops capable of providing IDSL. COVAD states that such work should be done under the Interconnection Agreement as part of the service ordered. BellSouth states that such work would be additional work not covered by the Interconnection Agreement. It appears that BellSouth had been performing the work necessary to make these loops IDSL capable until mid-November 1999.

The Hearing Officer finds that until the Commission decision in this matter, BellSouth shall continue to provision ISDN loops to COVAD where such loops are provisioned on copper. The Hearing Officer declines to order BellSouth to resume performing the disputed work to make non-copper loops IDSL compatible pending the Commission's decision. The Pre-Hearing Order provides that the Commission shall render its Final Decision in this matter on December 21, 1999. The Hearing Officer finds that waiting one additional week on this issue will not result in irreparable harm to either party.

d.

Neither party objected to the hearing procedure set forth in the Pre-hearing Order. Further, neither party requested any additional procedures.

The Hearing Officer finds that no additional procedures in this matter are necessary at this time.

December 14, 1999, Order of Hearing Officer, p. 2.

On December 17, 1999, the Hearing Officer conducted the hearing on the merits. At the hearing, Covad presented the direct testimony of the following witnesses: Thomas Allen, David Rosenstein, Julie Wallace, Larry Grisham, and John Marsh. BellSouth presented the testimony of: Keith Milner, Jerry Hendrix, Thomas Duttera, and Daonne Caldwell. Covad presented rebuttal testimony by David Rosenstein. On December 21, 1999, the Hearing Officer filed his Recommended Decision with the Commission.

FINDINGS, CONCLUSIONS AND DECISION

The Commission make the following findings of fact, conclusions of law, and decisions:

1.

Covad is a competitive local exchange carrier (CLEC). BellSouth is an incumbent local exchange carrier (ILEC). Covad and BellSouth have a negotiated Interconnection Agreement approved by the Commission in Docket No. 10247-U, In re: Approval of the Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc. ("BellSouth") and DTECA Communications, Inc., d/b/a Covad Communications Co., pursuant to Sections 251, 252, and 271 of the Telecommunications Act of 1996. Both DTECA Communications, Inc. d/b/a Covad Communications Company (COVAD) and BellSouth Telecommunications, Inc. (BellSouth) agree that the complaint is properly before the Commission for resolution.

2.

The Interconnection Agreement provides that "BST will offer loops capable of supporting telecommunications services such as: POTS, Centrex, basic rate ISDN, analog PBX, voice grade private line, and digital data (up to 64 kb/s), ADSL, and HDSL. Additional service may include digital PBXs, primary rate ISDN, Nx 64 kb/s, and DS1/DS3 and SONET private lines." Interconnection Agreement, Att. 2, § 2.3.1.

3.

The ISDN loops that BellSouth provides under the Interconnection Agreement must comply with certain technical standards. Those standards include Bellcore TR-NWT-000393, Generic Requirements for ISDN Basic Access Digital Subscriber Lines, and BellSouth TR-73600, Unbundled Local Loop Technical Specification. Interconnection Agreement, Att. 2, §§ 2.3.2.2 and 2.3.2.9.

4.

Pursuant to the Interconnection Agreement, Covad has been purchasing ISDN loops from BellSouth. Covad purchases these ISDN loops in order to provide an IDSL service to its customers. This IDSL service provides internet access at a speed of 144 Kbps. BellSouth has provisioned 144 ISDN loops to Covad in Georgia. Of these, 95 were provisioned without a trouble ticket being opened. Trouble tickets were opened on 49 of the loops. Some of the loops that were provisioned without trouble tickets were provisioned over Digital Loop Carriers (DLCs). Tr. 108-11.

5.

Neither party could provide any detailed explanation of what caused the trouble tickets or whether the trouble tickets were related to the fact that Covad uses the ISDN loops to provide an IDSL service. Covad witnesses speculated that the primary cause of the trouble tickets were failures unrelated to Covad's IDSL service, such as the BellSouth technician placing a cross connect in the wrong place or the line having a broken CO card. Tr. 287. BellSouth witnesses speculated that the problems were caused by Covad's IDSL service being incompatible with certain DLCs under certain conditions. For example, BellSouth introduced evidence that showed that the first four of the twenty-four slots of each digroup of the Marconi DISC*S DLC could not be used to provide Covad's IDSL service. BellSouth Ex. 2. However, the Marconi DLCs compose only 6.8% of the DLCs in BellSouth's network. Tr. 172. Further, BellSouth witness Mr. Dutera was only aware of one trouble ticket related to a problem with the Marconi system. Tr. 262.

6.

Under the Interconnection Agreement, Covad is entitled to purchase ISDN loops. The majority of the ISDN loops are clearly capable of providing Covad's IDSL service and Covad is entitled to use these ISDN loops to provide its IDSL service. In some cases, there are problems that are preventing Covad from providing its IDSL service. If the ISDN loop is not capable of providing the IDSL service because the loop does not meet the technical requirements (Bellcore TR-NWT-000393 and BellSouth TR-73600), then, under the Interconnection Agreement, BellSouth is obligated to bring the loop into compliance with the technical standards at the rate for the ISDN loop set forth in the interconnection agreement. If the ISDN loop is not capable of providing the IDSL service but the loop meets the technical requirements, then BellSouth is not obligated to make the loop capable of providing Covad's IDSL service at the rate for the ISDN loop set forth in the Interconnection Agreement.

7.

Because the Parties could not provide any detailed explanation of the cause of the problem or problems experienced, it is premature to attempt to determine whether the ISDN loops provisioned by BellSouth met the technical requirements contained in the Interconnection Agreement. It would be unfair to Covad to allow BellSouth to stop work on problem ISDN loops before the cause of the problem has been identified. On the other hand, if the problems were ultimately caused because Covad's use for the loop required more work from BellSouth than the contract required, then it would be unfair to make BellSouth bear that extra cost. The parties are directed to work together and to share technical specifications to isolate the cause of and to reach solutions for any such problems.

8.

BellSouth shall continue to provide ISDN loops to Covad. Such loops shall comply with the technical requirements set forth in the Interconnection Agreement. If the ISDN loop results in a trouble ticket, BellSouth shall endeavor to isolate the cause of the problem and provide the ISDN loop in a manner that allows Covad to provide its IDSL service. Covad shall cooperate with BellSouth in isolating and solving the problem. Except as set forth below, BellSouth shall only charge Covad the rate for the ISDN loop set forth in the Interconnection Agreement and the Commission will not reconsider such rates.

9.

In any case where the ISDN loop is not capable of providing the IDSL service because of a DLC incompatibility, but the loop still meets the technical requirements of the Interconnection Agreement, BellSouth shall charge Covad the rate for the ISDN loop set forth in the Interconnection Agreement; provided, however, that said charges shall be subject to a true-up for additional work performed by BellSouth in order to make the loop capable of providing Covad's IDSL service. In such cases, BellSouth shall determine the costs of the additional work performed by BellSouth. By May 1, 2000, the parties shall file with the Commission a proposed additional non-recurring charge for such additional work to be added to the ISDN rate for those DLC-incompatible loops. Such additional charge shall be limited to the cost of the additional work necessary to make the loop capable of providing Covad's IDSL service and shall not include any costs already covered by the NRC for the ISDN loop. Further, such additional cost shall only apply to those loops requiring the additional work. If no such additional charge is appropriate (e.g., the work was already necessary to bring the loops into compliance with the technical requirements), the parties shall so notify the Commission. If the Parties cannot reach an agreement on the need for and the amount of the additional charge by May 1, 2000, each Party shall file with the Commission its own proposal. Such filings must clearly delineate the area(s) of dispute between Parties. In the event the Commission approves such an additional charge, the Commission shall

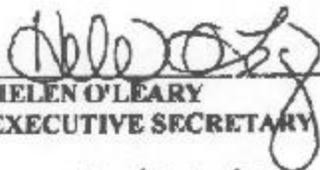
require Covad to pay such additional charge for each of the loops subject to the true-up (i.e., loops that were not capable of providing the IDSL service because of a DLC incompatibility but that still met the technical requirements of the Interconnection Agreement).

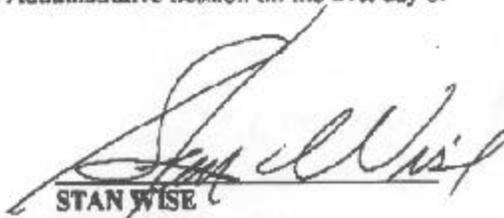
WHEREFORE IT IS ORDERED that:

- A. All findings, conclusions and statements made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, and statements of regulatory policy of this Commission.
- B. As set forth in the body of this Order, the parties are directed to work together and to share technical specifications to isolate the cause of and to reach solutions for the problems that are preventing Covad from providing its IDSL service over BellSouth's ISDN loops.
- C. BellSouth shall continue to provide ISDN loops to Covad. Such loops shall comply with the technical requirements set forth in the Interconnection Agreement. If the ISDN loop results in a trouble ticket, BellSouth shall endeavor to isolate the cause of the problem and provide the ISDN loop in a manner that allows Covad to provide its IDSL service. Covad shall cooperate with BellSouth in isolating and solving the problem. Except as otherwise ordered herein, BellSouth shall only charge Covad the rates for the ISDN loop set forth in the Interconnection Agreement.
- D. In any case where the ISDN loop is not capable of providing the IDSL service because of a DLC incompatibility, but the loop still meets the technical requirements of the Interconnection Agreement, BellSouth shall charge Covad the rates for the ISDN loop set forth in the Interconnection Agreement; provided, however, that said charges shall be subject to a true-up for additional work performed by BellSouth in order to make the loop capable of providing Covad's IDSL service. In such cases, BellSouth shall determine the costs of the additional work performed by BellSouth. As set forth in the body of this Order, by May 1, 2000, the parties shall file with the Commission a proposed additional non-recurring charge for such additional work to be added to the ISDN rate for those DLC-incompatible loops. If no such additional charge is appropriate, the parties shall so notify the Commission. If the Parties cannot reach an agreement on the need for and the amount of the additional charge by May 1, 2000, each Party shall file with the Commission its own proposal. Such filings must clearly delineate the area(s) of dispute between Parties.
- E. Any motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

F. Jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action the Commission in Administrative Session on the 21st day of December 1999.


HELEN O'LEARY
EXECUTIVE SECRETARY
12/21/99
DATE


STAN WISE
CHAIRMAN
12-21-99
DATE