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October 10, 2003

**VIA HAND DELIVERY**

Blanca S. Bayo, Director  
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Betty Easley Conference Center  
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Re: Docket No.: 981834-TP and 990321-TP

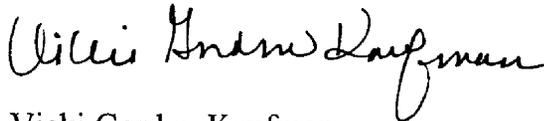
Dear Ms. Bayo:

On behalf of DIECA Communications, Inc. d/b/a Covad Communications Company (Covad), enclosed for filing and distribution are the original and 15 copies of the following:

- 09946-03 ▶ DIECA Communications, Inc. d/b/a Covad Communications Company's Motion to Compel BellSouth Telecommunications, Inc. to Respond to Covad's Second Set of Discovery
- 09947-03 ▶ DIECA Communications, Inc. d/b/a Covad Communications Company's Motion to Compel Verizon Florida, Inc. to Respond to Covad's Second Set of Discovery

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me. Thank you for your assistance.

Sincerely,



Vicki Gordon Kaufman

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL VGK/mls
- OPC Enclosure
- MMS \_\_\_\_\_
- SEC J
- OTH \_\_\_\_\_

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Competitive Carriers  
for Commission action to support local  
competition in BellSouth Telecommunications,  
Inc.'s service territory

Docket No. 981834-TP

In re: Petition of ACI Corp. d/b/a Accelerated  
Connections, Inc. for generic investigation to  
ensure that BellSouth Telecommunications,  
Inc., Sprint-Florida, Incorporated, and GTE  
Florida Incorporated comply with obligation  
to provide alternative local exchange carriers  
with flexible, timely, and cost-efficient  
physical collocation.

Docket No. 990321-TP

Filed: October 10, 2003

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**DIECA Communications, Inc. d/b/a Covad Communications Company's  
Motion to Compel BellSouth Telecommunications, Inc. to Respond to  
Covad's Second Set of Discovery**

DIECA Communications, Inc. d/b/a Covad Communications Company (Covad), pursuant to rule 28-106.204, Florida Administrative Code, moves this Commission for an order requiring BellSouth Telecommunications, Inc. (BellSouth) to fully respond to Covad's Second Set of Discovery (Interrogatory Nos. 6-31 and Production Request No. 2). As grounds therefore, Covad states:

**Introduction**

1. On September 15, 2003, Covad served its Second Set of Interrogatories (Nos. 6-31) and Second Request for Production (No. 2) on BellSouth. On September 25, 2003, BellSouth filed general and specific objections to Covad's Second Set of Discovery. On October 6, 2003, BellSouth filed its responses and objections to Covad's Second Set Discovery.

**Standard for Ruling on BellSouth Objections**

2. As the discovery rules make clear, the scope of discovery is broad. *See Allstate v.*

*Boecher*, 733 So.2d 993, 935 (Fla. 1999).<sup>1</sup> Rule 1.280(b), Florida Rules of Civil Procedure, addresses the scope of discovery:

**Scope of Discovery.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) *In General.* Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

3. The purpose of discovery is “to simplify the issues of the case, to eliminate the element of surprise, . . . to avoid costly litigation, and to achieve a balanced search for the truth and achieve a fair trial.” *See Elkins v. Syken*, 672 So.2d 517, 522 (Fla. 1996). In *Dodson v. Persell*, 390 So.2d 704, 707 (Fla. 1980), the Florida Supreme Court stated that: “A search for truth and justice can be accomplished only when all relevant facts are before the judicial tribunal.” The Court also stated that a main purpose of discovery is “to provide each party with all available sources of proof as early as possible to facilitate trial preparation.” *Id.* at 706. When the above standards for discovery are applied to BellSouth’s objections, they must fail. The information Covad seeks is relevant and likely to lead to the admission of relevant evidence because the information bears directly on the issues before the Commission in this proceeding.

4. BellSouth’s objections fall into two main categories – relevance and burdensomeness. BellSouth also objects to some of the interrogatories on the grounds that they call for “speculation.” Each objection is addressed in turn below.

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<sup>1</sup> “Our rules of civil procedure broadly allow parties to obtain discovery of “any matter, not privileged, that is relevant to the subject matter of the pending action,” whether the discovery would be admissible at trial, or is merely “reasonably calculated to lead to the discovery of admissible evidence.”

## Relevance

5. As the Commission is aware, this proceeding has been divided into two phases. The second phase of the proceeding will consider, among other things, what rates should be set for each collocation element and the appropriate application of those rates. BellSouth has objected to the majority of Covad's requests on the grounds that the questions go to the "technical, power issues" that were addressed in Phase I and are thus irrelevant to this phase of the proceeding.<sup>2</sup>

6. However, even a brief review of Covad's questions belies BellSouth's claim. While Covad will not discuss each interrogatory in detail, some examples are illustrative. Interrogatory Nos. 6 and 7 attempt to elicit information concerning what it cost BellSouth to construct power plants in its central offices.<sup>3</sup> Interrogatory No. 7 seeks similar information for central offices where augments have occurred. Interrogatory No. 9 seeks to discover how any such new construction or augments were paid for. Interrogatory Nos. 20–31 seek information regarding the capacity in amperes present in BellSouth's central offices.

7. Each of Covad's discovery requests goes to matters squarely at issue in Phase II, such as: What are BellSouth's actual power costs? Does BellSouth incur such costs on a one-to-one basis as it claims (that is for one amp ordered, does it incur one amp of cost) or are its costs less than that? Under BellSouth's proposed charges, is it recovering twice for the same capacity?

8. Without relevant information as to BellSouth's infrastructure costs, neither this Commission (nor Covad) will have needed information upon which to base collocation rates. Covad's discovery is squarely designed to discover the actual costs BellSouth incurs and thus is

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<sup>2</sup>BellSouth has objected to Interrogatory Nos. 6–16 and Nos. 20–31 on this basis. The interrogatories to which BellSouth objects are attached hereto as Attachment A.

<sup>3</sup> BellSouth also objects that collecting this information would be burdensome. Covad offers a compromise on that issue in paragraphs 11-12.

directly relevant to the rate setting issues in this phase of the proceeding.

9. Further, during the hearing in Phase I, several Commissioners discussed separating BellSouth's infrastructure and energy charges into two separate charges. (See, Tr. pp. 171, 179–181, 193). Covad made a similar proposal in Phase I. Covad's discovery seeks information that would allow the Commission to set rates for these separate charges based on BellSouth's actual costs, should the Commission decide to do so. The Commission should strive to have the most complete record possible to facilitate its decision making.

10. Covad's discovery is calculated to lead to the discovery of information relevant to the issues in Phase II and therefore its motion to compel should be granted.

#### **Burdensomeness**

11. BellSouth also objected to Interrogatory Nos. 6 and 7 as unduly burdensome because they seek information for power plants in BellSouth's central offices since 1996. To address BellSouth's concern, Covad is willing to limit the scope of Interrogatories Nos. 6 and 7 to the last five (5) power plants constructed or augments made, respectively.<sup>4</sup>

12. BellSouth also objected to Interrogatory Nos. 23-31 as unduly burdensome because they request that BellSouth provide information for its central offices since January 1, 1996. Again, to address BellSouth's concern, Covad is willing to limit the scope of Interrogatory Nos. 23-31 to any 20 BellSouth central offices where Covad is collocated.

#### **Speculation**

13. Finally, BellSouth objects to Interrogatories Nos. 13-16 and Request for Production No. 2, which seek information regarding a non-recurring charge for infrastructure costs, because it claims the requests call for "speculation." BellSouth says that if the Commission

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<sup>4</sup> BellSouth was able to provide information regarding costs as to its last two power plants in response to Covad Interrogatory No. 3. Providing information as to five (5) power plants is not unduly burdensome.

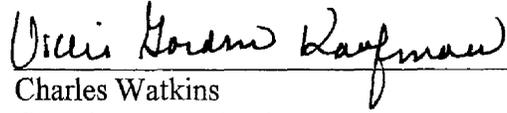
ordered BellSouth to recover these costs on a non-recurring basis, “BellSouth would have to reconsider its approach...” However, these requests directly relate to the proposal made by the Commissioners during Phase I to separate BellSouth’s power charge into two separate charges for infrastructure and energy. Covad’s requests seek information related to the amount that BellSouth would consider appropriate to charge if the Commission were to order such a separation and are directly relevant to the rate setting matters at issue.

14. Covad has discussed this motion to compel with counsel for BellSouth and at this time has been unable to resolve it.

### **Conclusion**

15. Each of the requests to which BellSouth has objected go directly to information required to assess the appropriateness of the rates BellSouth proffers in this proceeding. Therefore, such information is relevant to the issues the Commission will decide in this phase of the case.

**WHEREFORE**, the Commission should enter an order granting Covad's motion to compel and requiring full and complete answers to Covad's Second Set of Discovery.



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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 foregoing Motion to Compel has been furnished by (\*) hand delivery, (\*\*) electronic mail and U.S. Mail this 10<sup>th</sup> day of October 2003, to the following:

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Vicki Gordon Kaufman

## ATTACHMENT A

**INTERROGATORY NO. 6.** For each new power plant constructed in BellSouth's central offices in Florida since January 1, 1996, provide:

- a. the central office CLLI code;
- b. The date of the new construction;
- c. The total cost of the power plant;
- d. The total capacity of the power plant after completion of the construction;
- e. The total capacity of the power plant before the new construction, if any;
- f. The number of collocated CLECs at the central office immediately before the new construction;
- g. The total requested available DC power in amperes by all collocated CLECs at the central office immediately before the new construction;
- h. The total available power requirements of BellSouth at the central office immediately before the new construction;
- i. Whether available power requested by collocated CLECs were causative of the need for the new construction.

**INTERROGATORY NO. 7.** For each augment to batteries, rectifiers or generators made to power plants in BellSouth's central office in Florida since January 1, 1996, provide:

- a. the central office CLLI code;
- b. The date of the augment to batteries, rectifiers or generators;
- c. The total cost of the augment to batteries, rectifiers or generators;
- d. The total capacity of the power plant after completion of the augment to batteries, rectifiers or generators;
- e. The total capacity of the power plant before augment to batteries, rectifiers or generators;
- f. The number of collocated CLECs at the central office immediately before the augment to batteries, rectifiers or generators;
- g. The total requested available DC power in amperes by all collocated CLECs at the central office immediately before the augment to batteries, rectifiers or generators;
- h. The total available power requirements of BellSouth at the central office immediately before the augment to batteries, rectifiers or generators;
- i. Whether available power requested by collocated CLECs were causative of the need for the augment to batteries, rectifiers or generators.

If more than one augment has been done to a particular central office since January 1, 1996, provide the above information separately for each augment done.

**INTERROGATORY NO. 8.** What is the oldest un-augmented power plant in a Florida central office still operating today?

**INTERROGATORY NO. 9.** For all power plants constructed or augmented prior to January 1, 1996, were the costs of said power plants or augments to power plants paid for by adjustments to the rates for local service in Florida? If not, please explain.

**INTERROGATORY NO. 10.** How many central offices does BellSouth have in Florida?

**INTERROGATORY NO. 11.** How many of the central offices identified in response to Interrogatory No. 10 contain physically collocated CLECs today.

**INTERROGATORY NO. 12.** For each central office with current physically collocated CLEC(s), please provide:

- a. The CLLI code identifying the central office
- b. The current number of collocated CLECs in the central office
- c. The total amperes ordered by each CLEC (if the CLEC uses its own BDFB, please only indicate the actual ordered amperes, not the fused amperes)
- d. Identify the date each said CLEC physically collocated in the central office.

**INTERROGATORY NO. 13.** If the Commission requires BellSouth to offer a non-recurring charge (NRC) to recover its infrastructure cost on a per ampere basis, how much should such a charge be?

**INTERROGATORY NO. 14.** If maintenance costs are included in the NRC provided in Interrogatory No. 13 above, what portion of the charge is attributable to maintenance?

**INTERROGATORY NO. 15.** If maintenance costs are not included in the NRC provided in Interrogatory No. 13 above, what additional charges would apply if the Commission required the NRC to reflect maintenance?

**INTERROGATORY NO. 16.** Provide all calculations supporting the charges listed in Interrogatory Nos. 13 -15 above.

**INTERROGATORY NO. 20.** Provide the total capacity in amperes on an aggregate basis for all BellSouth central offices in Florida today.

**INTERROGATORY NO. 21.** Of the total capacity in amperes provided in response to Interrogatory No. 20, what percentage of that capacity is currently ordered available capacity by CLECs who are collocated with BellSouth?

**INTERROGATORY NO. 22.** Of the total capacity in amperes identified in response to Interrogatory No. 20, how much of that total capacity in amperes is currently unused or spare capacity?

**INTERROGATORY NO. 23.** Provide the total capacity in amperes that has been added as augments or new construction on an aggregate basis for all BellSouth central offices in Florida since January 1, 1996.

**INTERROGATORY NO. 24.** Of the total capacity in amperes provided in response to Interrogatory No. 23, what percentage of that capacity is currently ordered available capacity by CLECs who are collocated with BellSouth?

**INTERROGATORY NO. 25.** Of the total capacity in amperes identified in response to Interrogatory No. 23, how much of that total capacity in amperes is currently unused or spare capacity?

**INTERROGATORY NO. 26.** For each BellSouth central office in Florida, provide the current power capacity in amperes.

**INTERROGATORY NO. 27.** For each BellSouth central office in Florida, of the capacity in amperes per central office provided in response to Interrogatory No. 26, what percentage of that capacity has been ordered by CLECs who are collocated with BellSouth?

**INTERROGATORY NO. 28.** For each BellSouth central office in Florida, of the total capacity in amperes identified in response to Interrogatory No. 26, how much of that total capacity in amperes is currently unused or spare capacity?

**INTERROGATORY NO. 29.** For each BellSouth central office in Florida, provide the total capacity in amperes that has been added as augments or new construction in Florida since January 1, 1996.

**INTERROGATORY NO. 30.** For each BellSouth central office in Florida, of the capacity in amperes per central office provided in response to Interrogatory No. 29, what percentage of that capacity has been ordered by CLECs who are collocated with BellSouth?

**INTERROGATORY NO. 31.** For each BellSouth central office in Florida, of the total capacity in amperes identified in response to Interrogatory No. 29, how much of that total capacity in amperes is currently unused or spare capacity?