ORIGINAL

Matilda Sanders

From: Vicki Gordon Kaufman
Sent: Tuesday, September 14, 2004 9:10 AM
To: Filings@psc.state.fl.us
Cc: Gene Watkins; Adam Teitzman; Nancy White; Meredith Mays
Subject: E filing: Covad Notice of Supplemental Authority, Docket No. 040601-TP

Pursuant to the Commission's procedures for e-filing, Covad Communications Company provides the following information:

a. The attorney responsible for this filing is:
Vicki Gordon Kaufman
McWhirter Reeves McGlothlin Davidson Kaufman & Arnold, PA
117 South Gadsden Street
Tallahassee, Florida 32301
850.222.2525
850.222.5606 fax

b. The document is to be filed in Docket No. 040601-TP, In re: Petition of DIECA Communications, Inc., for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996

c. The document is filed on behalf of Covad Communications Company.

d. The document consists of:
>Covad's notice, which is 3 pages long
>La Staff comments, which is 7 pages long
>NC Staff comments, which is 6 pages long
for a total of 16 pages.

e. The document is DIECA Communications, Inc. d/b/a Covad Communications Company's Notice of Supplemental Authority.

CMP _____
COM _____
CTR _____
ECR _____
GCL _____
OPC _____
MMS _____
RCA _____
SCR _____
SEC 1
OTH _____

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of DIECA Communications, Inc., d/b/a Covad Communications Company, for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996.

Docket No.: 040601-TP

Filed: September 14, 2004

DIECA Communications, Inc. d/b/a Covad Communications Company's Notice of Supplemental Authority

DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) files this Notice of Supplemental Authority. On September 3, 2004, pursuant to Order No. PSC-04-0833-PCO-TP, Covad and BellSouth Telecommunications, Inc. (BellSouth) filed Legal Briefs.

Attached hereto is the following supplemental authority, filed after the filing of Covad's Legal Brief:

- Louisiana Public Service Commission Staff Brief Concerning the 47 USC § 271 Status of Line Sharing, filed in the companion proceeding between Covad and BellSouth in Louisiana, *In re: Petition for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. U-28027, filed September 10, 2004;

- North Carolina Utilities Commission Public Staff Comments on Line Sharing, filed in the companion proceeding between Covad and BellSouth in North Carolina, *In re: Petition of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. P-775, Sub 8, filed September 10, 2004.

S/ Vicki Gordon Kaufman
Charles E. Watkins
Covad Communications
1230 Peachtree Street, 19th Floor
Atlanta, Georgia 30309
(404) 942-3492

Vicki Gordon Kaufman
McWhirter Reeves McGlothlin Davidson Kaufman & Arnold, PA
117 South Gadsden Street
Tallahassee, Florida
(850) 222-2525

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 Notice of Supplemental Authority has been furnished by (*) electronic mail and U.S. Mail this 14th day of September 2004 to the following:

(*) Adam Teitzman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Fl 32399

(*)Nancy White
Meredith Mays
c/o Nancy Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

S/Vicki Gordon Kaufman
Vicki Gordon Kaufman

ORIGINAL

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY **DOCKET NO. U-28027**

EX PARTE

In re: Petition for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc. Pursuant to Section 252(B) of the Telecommunications Act of 1996.

STAFF'S BRIEF CONCERNING THE 47 USC § 271 STATUS OF LINE SHARING

NOW COMES STAFF, of the Louisiana Public Service Commission ("LPSC", "Commission"), who hereby submits the following brief in support of its position relative to Dieca Communications, Inc. d/b/a Covad Communications Company's ("Covad") petition for arbitration, restricted to the single issue currently being addressed, namely, ""Is BellSouth Telecommunications, Inc. ("BellSouth") obligated to provide Covad access to line sharing after October 2004?"

BACKGROUND

Covad's petition for arbitration, wherein it requested the Commission issue a decision on a number of issues, was published in the Commission's Official Bulletin dated July 2, 2004. The threshold issue, as stated above, concerns whether BellSouth has a continuing obligation to provide access to line sharing after October 2004, pursuant to Section 271 of the Telecommunications Act.[1] In light of this fast approaching determination deadline, which will be explained supra, the parties at the August 12, 2004 status conference held in this

[1] 47 USC § 271.

matter, established September 3, 2004 as a date to submit simultaneous briefs to the Administrative Hearings Division.[2]

The main parties to this proceeding, BellSouth and Covad, have provided a thorough discussion of the history of line sharing[3] in their respective briefs, a discussion which Staff will omit for the sake of brevity. Staff would like to emphasize the critical decision giving rise to this proceeding, the FCC's *Triennial Review Order*[4], wherein the FCC essentially determined that the high frequency portion of the loop ("HFPL") was no longer required to be unbundled pursuant to Section 251 of the Telecommunications Act of 1996. The critical date referenced herein, October 2004, is the date after which no new line sharing arrangements subject to the requirements of Section 251 may be requested.

APPLICABLE LAW

While there are numerous FCC and court decisions cited by the parties, as mentioned above, the threshold question to be answered is whether Section 271 of the Telecommunications Act of 1996 requires BellSouth to continue to provide "Line sharing." Section 271 provides, in pertinent part,

(B) Competitive checklist

> Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:
>
> ***

[2] Staff originally agreed to submit a brief on this same date. Staff was subsequently advised that in all other jurisdictions in the BellSouth region, a different filing date was applied to the Staff response. Staff requested, and was granted, additional time to file.

[3] In simplistic terms, line sharing involves the sharing of the loop by two carriers, an ILEC providing voice service over the low frequency portion of the loop, in this instance BellSouth, and a CLEC providing data services (DLEC), providing broadband services over the high frequency portion of the loop.

[4] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, et al.*, CC Docket No. 01-338, et al., Federal Communications Commission ("FCC") 03-36 (rel. Aug. 21, 2003.)

(IV) Local loop transmission from the central office to the customer's premises unbundled from local switching or other services.

DISCUSSION

Initially, it should be noted that it is unmistakable that the FCC has determined that Incumbent Local Exchange Carriers ("ILECs") no longer have a Section 251 requirement to provide line sharing.[5] It is also unmistakable that the FCC recognized Regional Bell Operating Companies ("RBOCs") as having a continuing obligation to provide non-discriminatory access to network elements pursuant to § 271.[6] Unfortunately, the FCC did not address which network elements an RBOC has a continued 271 obligation to provide. Simply put, the *Triennial Review Order* makes no mention as to whether an RBOC has a continued obligation to provide line sharing pursuant to § 271. Thus, the central determination as to whether an obligation to provide line sharing under 271 exists may be couched on whether the definition of "Local loop transmission" includes line sharing. Unfortunately, while Congress provides no further explanation as to what composes local loop transmission, the pertinent FCC decisions provide some guidance.

1. Effect of the FCC's *Triennial Review Order*

In the *Triennial Review Order* the FCC issued new rules concerning the status of unbundling. As this tribunal is no doubt aware, the DC Circuit's decision in *United States Telecommunication Ass'n v. FCC*, 359 F.3rd 554 (D.C. Cir. 2004) ("USTA II") vacated a number of the FCC's findings. However, the portion of the decision wherein the FCC concluded that RBOCs are no longer required to continue making available as a UNE the High Frequency Portion of the Loop ("HFPL") for line sharing arrangements pursuant to

[5] TRO at ¶255-263.
[6] TRO at ¶ 650.

Section 251 remained in affect. Nonetheless, as mentioned above, the FCC also concluded that,

> "BOCs have an independent obligation, under Section 271 (c)(2)(b) to provide access to certain network elements that are no longer subject to unbundling under Section 251, and to do so at just and reasonable rates."[7]

Thus, regardless of the FCC's position regarding the obligation to provide line sharing pursuant to § 251, it may still be the case that access is required to be provided pursuant to § 271.

2. <u>Section 271 Orders</u>

Section 271 of the Telecommunications Act of 1996 sets forth the process whereby an RBOC can seek entry into the long distance market. Central to the process is the RBOCs compliance with a number of factors contained in a detailed checklist of requirements established by the Act. While the above provides a very simplistic overview of § 271, it should be noted that the requirements of 271 essentially provide conditions which must be satisfied before the proverbial "carrot" was offered to RBOCs in the form of authority to provide long distance services. Among the requirements considered in the review process, specifically in Checklist Item 4[8], was the requirement that BellSouth provide non-discriminatory access to line sharing.

While Staff is well aware the present issue concerns the obligations arising from Section 271 of the Federal Act, Staff would be remiss if it did not advise this tribunal that BellSouth submitted data relative to its provision of line sharing in Louisiana to be reviewed in connection with Checklist Item 4. Staff considered said information as part of its Final

[7] TRO at ¶ 650.
[8] 47 USC 271(C)(2)(b)

Recommendation issued in Docket U-22252-E, adopted by the LPSC in Order U-22252-E, which approved BellSouth's Louisiana 271 application at the state level.

The FCC, when jointly deciding BellSouth's Section 271 applications for Georgia and Louisiana, likewise considered line sharing in connection with Checklist Item 4, and approved BellSouth's performance by stating as follows:

> Our conclusion is based on our review of BellSouth's performance for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, xDSL capable loops, high capacity loops and digital loops, and our review of BellSouth's processes for line sharing and line splitting."[9]

While the FCC never definitively stated whether line sharing is a loop transmission facility as contemplated by Section 271(c)(2)(b), it is nonetheless clear that it found that BellSouth had at the time of its 271 application, an obligation to provide line sharing in connection with Checklist Item 4. Additionally, the FCC has made no pronouncement absolving BellSouth of a continuing obligation to comply with the requirements of Section 271, including, but not limited to, line sharing. Absent such a pronouncement, Staff must conclude the obligation continues to exist.

Certainly, it would be preferable if the FCC reached a definitive determination on § 271 status of line sharing. Indeed, two current proceedings pending before the FCC may reach a decision on this issue, including the *Order and Notice of Proposed Rulemaking in Docket 01-338*, released August 20, 2004, which seeks comment on, upon other things,

> (H)ow various incumbent LEC service offerings and obligations, such as tariffed offerings and BOC section 271 access obligations, fit into the Commission's unbundling framework. Id at ¶ 9.

---

[9] *Joint Application by BellSouth Corporation, BellSouth Telecommunication, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Released May 15, 2002, FCC 02-147.

Additionally, as mentioned by Covad, BellSouth has pending a Petition for Forbearance, filed pursuant to 47 USC 160(c), whereby it is seeking forbearance from its Section 271 obligations. However, in light of the impending change in the § 251 status of line sharing, the LPSC cannot wait for such a determination.

3. **BellSouth's Pending Motion to Modify SEEMS Plan in Docket U-22252-C 6-Month Review Proceeding.**

Staff would be remiss if it did not mention a Motion to Modify SEEMS Plan filed by BellSouth in Docket U-22252-C, which is currently the subject of an ongoing Staff review. Said motion is no different than similar motions filed by BellSouth throughout its region, and referenced in both BellSouth and Covad's filings in this matter. In no way is Staff's position, as stated herein, to be considered as determinative of that issue. Additionally Staff does not waive its right to fully address the motion in that proceeding.

CONCLUSION

Absent a definitive pronouncement from the FCC, Staff's position is that BellSouth has a continuing obligation to provide line sharing, in accordance with its grant of Section 271 authority.

Dated this 10th day of September 2004.

Respectfully submitted,
LPSC LEGAL DIVISION

Brandon Frey, (#24050)
Staff Attorney
Louisiana Public Service Commission
P.O. Box 91154
Baton Rouge, Louisiana 70821-9154

Docket No. P-775, Sub 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996	)))))))	**PUBLIC STAFF COMMENTS ON LINE SHARING**

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Robert P. Gruber, and submits these comments in response to the Commission's Order of August 13, 2004, concerning the obligation of BellSouth Telecommunications, Inc. (BellSouth) to provide line sharing to DIECA Communications, Inc., d/b/a Covad Communications Company (Covad).

1. In an August 12, 2004, joint letter to the Commission, BellSouth and Covad informed the Commission that the parties were seeking a Commission ruling on BellSouth's obligation to provide Covad access to line sharing after October 2004. The companies stated their intent to hold in abeyance all other issues and outstanding motions and to simultaneously file briefs supporting their respective positions on this limited matter.

2. The Commission's Order of August 13, 2004 granted the request of BellSouth and Covad to file legal briefs no later than September 3, 2004, with all other proceedings in this docket to be held in abeyance pending further order. In addition, the Commission requested the Public Staff to file comments on the briefs no later than September 10, 2004.

3. The single issue the parties have put before the Commission is whether BellSouth is obligated to provide Covad access to line sharing after October 2004. Line sharing is the process through which a competing local provider (CLP) accesses the high frequency portion of the loop (HFPL) while the incumbent local exchange carrier (ILEC) provides voice service over the lower frequency portion of the loop.

4. Two provisions of federal law, Sections 251 and 271 of the 1996 Act[1] are potentially pertinent to this question. Section 251 requires all ILECs such as BellSouth to interconnect with CLPs such as Covad and provide unbundled access to network elements in accordance with rules established by the Federal Communications

[1] References to "the Act" or "the 1996 Act" are to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.*

Commission (FCC) when the CLPs would be impaired without such access. Section 271 provides a list of the requirements (the competitive checklist) that the former Bell Operating Companies (BOCs) including BellSouth must meet in order to provide in-region, InterLATA service Competitive checklist item 4 asks whether access or interconnection to the "local loop transmission from the central office to the customer's premises, unbundled from local switching or other services" is generally offered and makes no reference to impairment.

5. In its *Line Sharing Order,*[2] the FCC found that CLPs were impaired without access to the high frequency spectrum of a local loop as a network element. As a result, the FCC required ILECs to provide CLPs with unbundled access to the HFPL.

6. In its August 21, 2003 *Triennial Review Order* [3], the FCC concluded that CLPs were not impaired without access to the HFPL as a network element. Thus, the FCC found ILECs no longer had to provide line sharing to CLPs. Noting that line sharing was widespread, the FCC recognized the disruption to CLPs and end users alike that elimination of the line sharing requirement could create if the change were to take place on a flash-cut basis. Thus, the FCC's rules included provisions to gradually phase out line sharing as a Section 251 network element.

7. The FCC limited line sharing to mass market loops that are all copper or stand-alone copper. FCC Rule 51.319(a)(1)(i) includes both a grandfathering provision and a transition period. The grandfathering provision permits all line sharing arrangements existing as of the effective date of the *TRO* to remain available at the rates in effect prior to the effective date of the *TRO* so long as the CLP or its successor continues to provide xDSL service to the end user. The grandfathering provision remains in effect until the next biennial review.[4]

8. The transition period adopted by the FCC allows CLPs to continue to add new customers throughout the first year after the effective date of the *TRO*. The rate for accessing the HFPL during this first year will be 25% of the rate for stand-alone copper loops. The rate for the second year increases to 50% of the stand-alone copper loop while the third year rate increases to 75% of the stand-alone copper loop. After the third year, the ILEC is no longer required to provide line sharing to the CLP for end users initiating service on or after the effective date of the *TRO*.[5]

---

[2] *Deployment of Wireline Services Officering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, FCC 99-355 (released December 9, 1999).

[3] *Review of the Section 251 Unbundling Obligation of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (released August 21, 2003), *vacated in part and remanded, United States Telecom Ass'n v. FCC, 359 F.3d 554 (D.C. Cir 2004).(TRO).*

[4] *Id.*, Paragraph 264.

[5] *Id.*, Paragraph 265.

9. The continuing Section 251 obligation and the related requirements for ILECs to provide unbundled access to the HFPL through line sharing have been clearly spelled out by the FCC. There appears to be no disagreement between BellSouth and Covad with respect to the line sharing requirements of Section 251. The FCC, through its *TRO*, set out the rules and obligations for grandfathered line sharing customers as well as those line sharing customers in the transition phase. While *USTA II*[6] has vacated certain rules in the *TRO*, the changes to line sharing were unaffected.

10. The dispute between the parties concerns Covad's contention that BellSouth is obligated to make line sharing available to **new** customers of Covad on or after October 2, 2004, the first anniversary of the effective date of the *TRO*. This disagreement centers on whether line sharing is included in the unbundling and access to local loops requirement set forth in Section 271(c)(2)(B)(iv) of the Act. As noted by Covad, under the requirements BellSouth agreed to when it was granted in-region interLATA long distance authority under Section 271, BellSouth is required to provide access to unbundled local loops. This obligation is in addition to and independent of any obligations or requirements BellSouth might have under Section 251.

11. BellSouth argues that the local loop unbundling requirement addressed in Checklist Item 4 requires the provision of the whole loop, nothing more or nothing less. BellSouth argues that it is only required to provide line sharing under Section 251. And since the FCC has provided for a transition period to eliminate line sharing as a UNE, then the only obligation BellSouth has to provide line sharing arises from the requirements of the FCC's transition plan. Once the transition period ends, BellSouth maintains that it will no longer be required to provide line sharing to CLPs.

12. In the Kansas/Oklahoma Order[7] granting interLATA in-region authority for SBC Communications, Inc. (SBC) in Kansas and Oklahoma, the FCC concluded in Paragraph 178 that:

> In order to establish that it is "providing" unbundled local loops in compliance with checklist item 4, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality. A BOC must also demonstrate that it provides nondiscriminatory access to unbundled loops. **Specifically, the BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested.** In order to provide the requested loop functionality, such as the ability to deliver xDSL services, the BOC may be required to take affirmative steps to

---

6 *U.S. Telecomm. Ass'n v. FCC*, 359 F. 3d 554 (D.C. Cir. 2004) *(USTA II)*

7 *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29 (released January 22, 2001).

condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities. The BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses digital loop carrier (DLC) technology or similar remote concentration devices for the particular loops sought by the competitor. (Footnotes deleted, Emphasis added)

13. The Kansas/Oklahoma Order clearly indicates that compliance with Checklist Item 4 requires BellSouth to do more than simply provide a whole loop to a CLP. This Order goes so far as to require the BOC to perform line conditioning if necessary. Indeed, this Commission noted the FCC's requirements as spelled out in the Kansas/Oklahoma Order in its Advisory Opinion with regard to BellSouth's request for 271 authority in North Carolina.[8]

14. BellSouth's contention that line sharing is not part of the Checklist Item 4 is inconsistent with its filings before this Commission and the FCC. Even though BellSouth now claims line sharing is not a requirement of Checklist Item 4, its brief and proposed order filed in Docket No. P-55, Sub 1022 addressed line sharing in connection with its compliance obligations of Checklist Item 4. In addition, BellSouth also addressed line sharing in its brief filed with the FCC in support of its Five-State Application for 271 authority.[9]

15. If providing line sharing was not required for ascertaining compliance with Checklist Item 4, BellSouth presumably would not have included an analysis of its line sharing capability. Further, the Public Staff submits the FCC would not have included sections dealing with line sharing when discussing Checklist Item 4 compliance in its numerous 271 Orders, including the Order that authorized BellSouth to provide in-region, InterLATA long distance service in North Carolina.[10]

16. The Public Staff urges the Commission to find that line sharing is a part of the Checklist Item 4 obligations of BellSouth. The Commission's determination of this issue should reflect that BellSouth has a Section 251 obligation to provide line sharing to existing customers on a grandfathered and transitional basis as well as an on-going Section 271 obligation to make line sharing available to new customers of CLPs on and after October 2, 2004.

---

[8] *Application of BellSouth Telecommunications, Inc., to Provide In-Region, InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. P-55, Sub 1022, Order and Advisory Opinion Regarding Section 271 Requirements, Page 168 (Issued July 9, 2002).

[9] *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, WC Docket No. 02-150, Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina (filed June 20, 2002).

[10] *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina and South Carolina*, WC Docket No. 02-150, Memorandum Opinion and Order, FCC 02-260, Paragraphs 249-50 (Released September 18, 2002).

17. The issue put forth by BellSouth and Covad does not require a Commission determination of the appropriate rates for line sharing. The Public Staff notes that the FCC has set forth specific rates for line sharing provided under the provisions of Section 251. With respect to the appropriate rates for line sharing provided under the auspices of Section 271, the Public Staff believes the FCC's Section 201 and 202 standards for just and reasonable rates would apply.

18. The Public Staff notes that several proceedings are ongoing at the federal level concerning line sharing which may ultimately have an impact on this matter.

Respectfully submitted this the 10th day of September 2004.

PUBLIC STAFF
Robert P. Gruber
Executive Director

Antoinette R. Wike
Chief Counsel

Robert B. Cauthen, Jr.
Lucy E. Edmondson
Staff Attorneys

4326 Mail Service Center
Raleigh, North Carolina 27699-4326
Telephone: (919) 733-6110

CERTIFICATE OF SERVICE

I certify that a copy of these Comments has been served on all parties of record or their attorneys, or both, by depositing a copy in the United States Mail, first class postage prepaid, properly addressed.

This the 10th day of September 2004.

Robert B. Cauthen, Jr.