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September 24, 2004
Via Email

Ms. Blanca Bayo
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 040601-TP, Covad's Request to Address the Commission at the October 5, 2004 Agenda Conference

Dear Ms. Bayo:

I am writing on behalf of Covad Communications, Inc. (Covad). On August 14, 2004, Covad and BellSouth Telecommunications, Inc. (BellSouth) filed a Joint Proposal in this docket, in which they proposed a procedural schedule wherein the parties would file legal briefs addressing the issue of whether BellSouth must continue to provide Covad with line sharing after October 2004. The Commission adopted and approved that proposal in Order No. PSC-04-0833-PCO-TP.

On September 23, 2004, the Commission Staff issued a recommendation addressing the issue discussed in the parties' briefs. However, the recommendation states that the decision is "post-hearing" and that "participation is limited to Commissioners and Staff."

With all due respect to Staff, Covad respectfully requests that it be permitted to address the Commission on the critical line sharing issue discussed in Staff's recommendation for several reasons. First, the decision the Commission will make in this matter is not post-hearing. No hearing has been held. The parties agreed, and the Commission approved, a request to brief the legal issue and then have the Commission make a decision. The parties' proposal does not state that they will forgo the right to address the Commission on the contents of the recommendation.

The fact that the Commission may have classified this briefing procedure as falling under section 120.57(2), Florida Statutes, does not turn it into a "post hearing" proceeding, when no hearing has been held nor does it obviate Covad's right to address the Commission on this matter of vital importance to Covad and to Florida consumers. Section 120.57(2) of the Administrative Procedure Act simply sets out procedures for matters that do not involve disputed issues of material fact. In fact, section 120.57(2)(a) states that the agency shall:

Ms. Bayo
September 24, 2004
Page 2

Give parties or their counsel the option, at a convenient time and place, to present to the agency or hearing officer written or oral evidence in opposition to the action of the agency or to its refusal to act, or a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction.

Second, the Commission's own rule, rule 25-22.0021(1), Florida Administrative Code, explicitly provides:

Persons who may be affected by Commission action on certain items on the agenda for which a hearing has not been held (other than actions on interim rates in file and suspend rate cases and declaratory statements) will be allowed to address the Commission concerning those items when taken up for discussion at the conference.

Clearly, the action Staff recommends will dramatically affect Covad and thus Covad is entitled pursuant to Commission rule to address the decision maker prior to any action.

Third, whether or not line sharing will continue in Florida is a vital policy issue. Covad suggests that the Commission would want to hear from the parties before making a decision and that it is certainly within its discretion to do so.

Therefore, Covad respectfully requests that the parties have the opportunity to address the Commission on the Staff recommendation in this matter on October 5, 2004.

Sincerely,

S/ Vicki Gordon Kaufman

Vicki Gordon Kaufman

Cc: Chairman Braulio L. Baez
Richard D. Melson
Adam Teitzman
Meredith Mays
Gene Watkins