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**Sent:** Thursday, July 19, 2001 3:46 PM
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The attached document is from:

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Docket No. 001797-TP - In re: Petition for Interconnection Arbitration by DIECA Communications, Inc. d/b/a Covad Communications Company Against BellSouth Telecommunications, Inc.

Number of pages: 40 including letter to Ms. Bayo, pleading and certificate of service.

Pleading entitled: Post-Hearing Brief of BellSouth Telecommunications, Inc.

A paper copy will be filed with the Division of the Commission Clerk and Administrative Services today.

By filing electronically, BellSouth accepts that the official copy is the version printed by the Public Service Commission's Division for the Commission Clerk and Administrative Services and filed in the official docket file.

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July 19, 2001

Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No. 001797-TP (Covad Arbitration)**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Post-Hearing Brief, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

James Meza III/V.F.

James Meza III

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

**CERTIFICATE OF SERVICE**
**Docket No. 001797-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Federal Express this 19th day of July, 2001 to the following:

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

| | | |
|---|---|---|
| Petition for Interconnection Arbitration By DIECA Communications, Inc. d/b/a Covad Communications Company Against BellSouth Telecommunications, Inc. | ) | Docket No. 001797-TP |
| | ) | Filed: July 19, 2001 |

**POST-HEARING BRIEF OF BELLSOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth") submits this post-hearing brief in support of its positions on the issues submitted to the Commission for arbitration in accordance with Section 252 of the Telecommunications Act of 1996, 47 U.S.C. § 252. Considering the evidence and applicable law, the Commission should adopt BellSouth's position on each of the issues which remain in dispute.

## INTRODUCTION

This arbitration proceeding was initiated by DIECA Communications, Inc. d/b/a Covad Communications Company Against BellSouth Telecommunications, Inc. ("Covad").[1] Although BellSouth and Covad were able to reach agreement on a number of issues through negotiation, a number of issues remain unresolved.[2]

The remaining issues that this Commission must resolve reach nearly every comer of the parties' interconnection agreement. But, there is a recurring theme that runs through this

[1] Covad filed its petition for arbitration on December 15, 2000, raising certain disputed issues concerning the parties' proposed interconnection agreement. BellSouth filed its response to the petition on January 9, 200 1. The Commission heard this matter on June 27, 28 and 29,200 1.

[2] The parties have resolved many of the issues originally in dispute, including certain issues that were resolved after the hearing in this case. The resolved issues in Florida are: 2, 3, 4, 9, 10, 13, 14, 15, 17, 20, 26, 27, 28, 3 1,32(b), 33, 34 and 35. Issue 19 has been redesignated as Issue 11 (b).

arbitration: Covad believes that it may demand any work process or arrangement from BellSouth, without regard to the requirements of the Telecommunications Act of 1996 ("the 1996 Act") or applicable rulings of the Federal Communications Commission ("FCC"), without regard to whether BellSouth makes available such processes or arrangements for itself, without regard to the costs imposed on BellSouth, and without regard to the fact that other ALECs may opt into Covad's agreement and the effect such opt ins will have on BellSouth. BellSouth's positions on the remaining unresolved issues in this arbitration are fully consistent with the 1996 Act and applicable rulings of this Commission and the FCC; the same cannot be said about the positions espoused by Covad.

In addition to being unconstrained by the law, in many instances the language proposed by Covad is fraught with ambiguity and is not even consistent with the testimony offered by Covad at the hearing. Adopting Covad's language would only ensure to embroil the parties and this Commission in disputes down the road, which is hardly in the public interest. For these reasons, as explained more fully below, based on the evidence introduced at the hearing and the applicable law, BellSouth respectfully submits that the Commission should adopt BellSouth's position on each of the remaining issues in dispute.

## II. STATUTORY OVERVIEW

The 1996 Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith.[3] After negotiations have continued for a specified period, the 1996 Act allows either party to petition a state commission for arbitration of unresolved issues.[4] The petition must identify the issues resulting from the negotiations that are resolved, as well as

[3] 47 U.S.C. § 251(c)(l).

[4] 47 U.S.C. § 252(b)(2).

those that are unresolved.[5] The petitioning party must submit along with its petition "all relevant documentation concerning: (1) the unresolved issues; (2) the position of each of the parties with respect to those issues; and (3) any other issues discussed and resolved by the parties.'" A non-petitioning party to a negotiation under this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the state commission receives the petition.' The 1996 Act limits a state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.[8]

Through the arbitration process, the Commission must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, they then form the basis for arbitration. Once the Commission provides guidance on the unresolved issues, the parties will incorporate those resolutions into a final agreement that will then be submitted to the Commission for its final approval."

## STATEMENT OF BASIC POSITION

The Commission's goal in this proceeding is to resolve each issue in this arbitration consistent with the requirements of Section 25 1 of the Telecommunications Act of 1996 ("1996 Act"), including the regulations prescribed by the Federal Communications Commission ("FCC"). BellSouth and Covad have continued to negotiate in good faith, and have resolved a

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[5] See generally, 47 U.S.C. §§ 252(b)(2)(A) and 252 (b)(4).

[6] **47** U.S.C. $252(b)(2).

[7] **47** U.S.C. § 252(b)(3).

[8] **47** U.S.C. § 252(b)(4).

[9] **47** U.S.C. § 252(a).

significant number of issues since Covad's request for arbitration was tiled with this Commission.

Nevertheless, there remain a number of issues for which the parties have not been able to reach a solution. BellSouth believes that Covad's positions on these issues will not withstand close scrutiny. For the most part, these issues involve Covad's desire to receive preferential treatment. BellSouth believes that its positions are both reasonable and fair. The Commission should adopt BellSouth's position on these issues.

## STATEMENT OF POSITION ON THE ISSUES

**Issue A: What is the Commission's jurisdiction in this matter?**

*** The Commission has jurisdiction in this matter pursuant to Section 252 of the Act. ***

The Commission has jurisdiction in this matter pursuant to Section 252 of the Act, which requires the Commission to resolve "each issue set forth in the petition and the response, if any, by imposing conditions as required to implement" Section 251 of the Act, including the regulations prescribed by the FCC pursuant to Section 25 1.

The United States District Court for the Northern District of Florida has determined that the Commission is required to arbitrate and resolve all issues brought to the Commission, not just those that are subject to arbitration under the Telecommunications Act of 1996 ("1996 Act"). *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc., et al,* Case No. 4:97cv141-RH (N.D. Fla. June 6, 2000). BellSouth has appealed that case to the United States Court of Appeals for the Eleventh Circuit, where a panel has rejected the appeal on jurisdictional grounds, since the District Court remanded the matter to the Commission rather than issuing a final order. Reconsideration has been sought, but clearly the District Court opinion is binding on the Commission until that decision is reversed. Nevertheless, that decision does not require that

the Commission resolve any issue in any particular manner, just that the Commission arbitrate and resolve each "open issue." Such a resolution could result in the Commission concluding that BellSouth is not obligated to provide what Covad wants in the way of limited liability language. What the Commission cannot do, as long as the District Court decision stands, is refuse to consider or resolve an issue raised by the parties.

**Issue 1: What limitations of liability, if any, should be included in the Parties' Interconnection Agreement?**

*** This issue is beyond the scope of the Act. If, however, the Commission addresses this issue, liability for any negligent act should be limited to a credit for the cost of the services not performed or improperly performed. This limitation would not apply to gross negligence or intentional misconduct. ***

This issue is not an appropriate subject for arbitration because Section 252(c) of the Act only empowers the Commission to resolve "open issues" in a manner that meets the "requirements of section 25 1, including the regulations prescribed by the [FCC] pursuant to Section 251 . . .". 47 U.S.C. § 251(c)(l). None of the requirements of Section 251 addresses limitation of liability and there is nothing about a limitation of liability clause that would ensure compliance with the requirements of Section 25 1. Id.

In contrast, Covad argues that the Commission must resolve "any open issue" presented to it. (Tr. 32). In support of this proposition, Covad cites to MCI Telecom. Corp. v. BellSouth Telecom., Inc., 112 F. Supp. 2d 1286 (N.D. Fla. 2000). Covad did not cite to any other authority and admitted that its opinion was not based on the Commission's recent Order No. PSC-01-824-FOF-TP, issued March 30, 2001, in Docket No. 000649-TP, In Re: Petition By MCImetro Access Transmission Services LLC And MCI Covad Communications, Inc. For Arbitration Of Certain Terms And Conditions Of A Proposed Agreement With BellSouth Telecommunications,

("MCI Order"). (Tr. 82).

In that order, the Commission acknowledged that, although it was obligated to arbitrate "any open issue," "it may only impose a condition or term required to ensure that such resolutions and conditions meet the requirements of Section 25 1." MCI Order at 174. The Commission went on to find that, in the case of MCI, it was not appropriate to "impose adoption of any disputed terms contained in the limited liability provision whereby the parties would be liable in damages, without a liability cap, to one another for their failure to honor in one or more material respects any one or more of the material provisions of the Agreement." Id. at 175.[10]

Pursuant to its decision in the MCI Order, the Commission should refuse to impose any disputed terms in the limited liability provision because such a provision is not required to implement an enumerated item under Sections 251 and 252 of the Act. However, if the Commission should decide to require the parties to adopt certain language, the Commission should adopt BellSouth's proposed language, which limits the limitation of liability to negligent acts or omissions. Importantly, BellSouth's proposal excludes the limitation of liability for (1) gross negligence or intentional misconduct; and (2) BellSouth's refusal to comply with the terms of the agreement, provided that BellSouth's actions or inactions based upon a reasonable and good-faith interpretation of the terms of the agreement are not deemed to be a refusal to comply. (Tr. 499; Exhibit 39). BellSouth's proposed language is consistent with the limitation of liability provisions it has in its tariffs and is identical to the language agreed to between MCI and BellSouth. (Tr. 502; 83-84).

[10] The Georgia Public Service Commission, in Docket No. 11901-U, on March 7, 2001 reached a similar conclusion regarding this issue, finding that "the parties are not required to

Covad's proposal excludes the limitation of liability for breaches of a material provision of the agreement. Covad has not defined "material provisions," and on cross-examination, Covad witness Oxman refused to discuss the type of provision Covad considered to be material as he stated: "[w]e don't actually need to engage in the hypothetical act of deciding what a material breach would be." (Tr. 77-78).

As a result, Covad's language effectively renders any limitation of liability inapplicable because it could potentially apply to any breach of the agreement. (Tr. 593). In addition, the rationale for Covad's proposal is inconsistent. Covad premises its proposal on the belief that there should not be a limitation of liability in a normal commercial relationship between a retailer and a wholesaler. (Tr. 87). However, Covad witness Oxman admitted that Covad has a commercial relationship with its customers and that it would be reasonable for Covad to have a limitation of liability provision in agreements with its customers. (Tr. 88). Accordingly, for these reasons, BellSouth's proposal is more reasonable and should be adopted if the Commission decides to address this issue.

**Issue 5(a): What is the appropriate interval for BellSouth to provision an unbundled voice-grade loop, ADSL, HDSL or UCL for Covad?**

*** BellSouth will provide these facilities according to its Interval Guide, which is 5-7 working days after an error-free local service request has been received and a Firm Order Confirmation (FOC) has been returned to Covad. ***

The appropriate interval for installing voice-grade ADSL, HDSL, and UCL unbundled loops should be the intervals set forth in BellSouth's Interval Guide. Under this guide, the interval for voice-grade ADSL, HDSL, and UCL unbundled loops is 6 business days, which includes one business day for the Firm Order Confirmation ("FOC"), for timely orders received

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adopt language regarding a liability cap beyond what they are willing to agree upon through negotiations."

before 10 am, plus five business days to complete the loop provisioning. (Tr. 956). Service Level 1 ("SLY) voice grade loops should have an interval of five business days (1 for the FOC plus 4 for the loop) with receipt of a timely local service request ("LSR") due to the fact that these loops are nondesigned and are intended for POTS-type services. Id.

Covad's proposal, which would require BellSouth to provision these facilities within a fixed period of three business days, is unreasonable for the following reasons. First, Covad's fixed interval fails to consider the volume of loops ALECs demand from BellSouth on a monthly basis, which has grown significantly over the last year. For instance, in April 2000, BellSouth installed 5,969 of these loop types in Florida, while for March 2001, this number doubled to 12,203. (Tr. 956). BellSouth witness Latham testified that it was neither "possible nor practical" for BellSouth to provision these loops within three business days based on the volume of orders BellSouth receives. (Tr. 971). Second, provisioning an unbundled loop is more difficult than turning up retail circuits that may already be connected to BellSouth's switch. This is so because provisioning an unbundled loop involves cross-connect elements that must be provided to connect the loop facility to the ALEC's collocation space. (Tr. 956-57).

Third, Covad's proposal fails to take into account that demand for BellSouth's unbundled product can be very different throughout the state, that BellSouth's ability to provision a particular product within a given interval can be affected by technology, and that intervals for numerous unbundled elements have changed over the years. (Tr. 202-03, 15). Fourth, Covad's proposal of a fixed interval could result in BellSouth being required to provide the same products and services at different intervals to a variety of different customers, which Covad feels is reasonable, despite the fact that BellSouth receives approximately 12,000 orders a month for these loop types in Florida. (Tr. 211-12, 956). Fifth, Covad wants the best of both worlds: If the

Commission adopts Covad's proposal in this proceeding and eventually adopts a shorter interval period in the performance measures docket, Covad would expect BellSouth to follow the performances measures interval and not the interval set forth in its contract. In fact, Covad would seek performance penalties if BellSouth followed the terms of the contract. (Tr. 220). However, Covad is not willing to abide by the performance measures interval if the Commission requires a longer interval than what Covad has proposed. See Tr. 2 11-12.

Sixth, Covad's three-day interval was not based on any analysis or study of BellSouth's procedures or customer demand. Rather, as stated by Covad witness Allen, "[Covad] picked the three day interval because we thought it was obtainable, and we felt like . . . if BellSouth is ordered to comply with that, that they will find a means to do so." (Tr. 219). However, as stated above, BellSouth witness Latham specifically testified that Covad's proposed interval was neither "possible nor practical." (Tr. 971).

For these reasons, BellSouth's provisioning intervals as set forth in its Interval Guide are reasonable and thus should be adopted by the Commission.

**Issue 5(b): What is the appropriate interval for BellSouth to provision an IDSL-compatible loop for Covad?**

*** BellSouth's interval for IDSL-Compatible loops should be 10 business days plus the FOC interval, as set forth in BellSouth Service Interval Guide. Covad's proposed interval is unreasonable. ***

An IDSL-compatible loop, or Unbundled Digital Channel ("UDC") Loop, is identical to the ISDN loop but is provisioned in a manner that supports "data-only" ISDN, which will better meet the needs of ALECs who want to deploy IDSL. The appropriate interval for IDSL-compatible loops should be the period set forth in BellSouth's Interval Guide, which is 10 business days plus the FOC interval. (Tr. 958). The time necessary to provision this loop should

be longer than the time required to provision the loops listed in Issue 5(a) because these circuits are more complex. (Tr. 959). For example, when these circuits are provided through a Digital Loop Carrier ("DLC") system, they require a specialized line card in order to function properly. Id. In addition, they also must be provided on certain slots within the DLC in order to be compatible with IDSL service. Id. Covad witness Allen agreed that IDSL loops are more complex to provision that ADSL loops. (Tr. 216).

Covad proposes that BellSouth be required to provision IDSL compatible loops within a fixed time period of five business days. Covad's support for this provisioning period is based on the testimony of a former Bell Atlantic employee, William Seeger, who admitted that he was not responsible for provisioning unbundled loops to CLECs anytime between 1996 and 1998. (Tr. 323-34). He also admitted that there are differences in the way that BellSouth provisions loops to wholesale providers than the way that Bell Atlantic does. (Tr. 324). Consequently, Covad failed to set forth sufficient evidence establishing that its proposed interval period is either appropriate or reasonable. Again, BellSouth witness Latham testified that based on the volume of the orders BellSouth receives, BellSouth could not provision the IDSL loop within five days as an ongoing interval. See Tr. 973.

In addition, the same concerns about requiring BellSouth to comply with different fixed interval periods and Covad's inconsistent rationale set forth in Issue 5(a), apply equally here. Accordingly, the Commission should reject Covad's proposal and adopt BellSouth's proposed language on this issue.

**Issue 5(c): What should be the appropriate interval for BellSouth to "de-condition" (i.e., remove load coils or bridged tap) loops requested by Covad?**

*** BellSouth has proposed to condition loops within 14 days. BellSouth's position is reasonable and nondiscriminatory. ***

Loop conditioning is the removal of equipment or devices that diminish a loop's ability to provide advanced data services such as DSL. (Tr. 958). BellSouth has proposed to condition loops (by removing equipment such as load coils, repeaters, etc. or to remove bridged tap) within 14 days plus one day for the FOC. (Tr. 958, 972; Exhibit 39). This interval takes into consideration the difficulties involved with the placement of different types of facilities, the expected volumes of conditioning orders, and the scheduling and dispatching of technicians. (Tr. 959). The difficulties associated with the placement of facilities include but are not limited to (1) gaining municipal authority to close a street; (2) pumping water and/or hazardous gas from a manhole; (3) un-racking and re-racking large splice cases; and (4) dealing with older pulp-type cables. Id. Covad's proposed fixed interval of five business days is unrealistic and fails to take into consideration the various difficulties involved with conditioning a loop. Indeed, Covad witness Allen recognized that load coils can appear in the network, buried underground, or in the aerial plant. (Tr. 2 16).

Moreover, as with all of these loop provisioning issues, the primary evidence presented by Covad to support its five day fixed interval proposal was the testimony of a former Bell Atlantic employee, Mr. Seeger, regarding his experience as a technician. However, Mr. Seeger admitted that he had not provisioned a loop from 1996 to 1998 and that he did not provision any xDSL-capable loops while he was employed at Bell Atlantic. (Tr. 324). This evidence is insufficient to support a finding that BellSouth should be required to condition all loops within a fixed 5 day period. Accordingly, the Commission should adopt BellSouth's language as to this issue.

**Issue 6: Where a due date for the provisioning of a facility is changed by BellSouth after a Firm Order Confirmation has been returned on an order, should BellSouth reimburse Covad for any costs incurred as a direct result of the rescheduling?**

*** Covad requests that BellSouth financially guarantee that an order will be provisioned on the original due date given. This request results in additional work effort and, therefore, additional costs being incurred in the ordering phase, prior to the FOC being returned to Covad. Covad's proposal is unreasonable. ***

This issue centers on whether BellSouth should be required to pay Covad for costs associated with the rescheduling of the provisioning of a facility. In effect, Covad's proposal would require BellSouth to financially guarantee that an order will be provisioned on the original due date requested by Covad, which is unreasonable. (Tr. 513). BellSouth, on the other hand, proposes that it should not be required to reimburse Covad when a provisioning due date is changed after BellSouth returns a FOC. (Tr. 5 12) To understand the unreasonableness of Covad's proposal, a brief description of the ordering process is necessary.

When Covad places an order, it receives a FOC. (Tr. 225). A FOC is used by BellSouth to notify Covad that the order placed by Covad is correct in its form. (Tr. 513). The FOC provides the customer with the information required for control and tracking of the requests for the provisioning of local service. Id. When Covad places an order, it selects the due date based on a set target interval. (Tr. 225). The purpose of the FOC is not to guarantee that Covad will get service installed on the date selected by Covad and set forth in the FOC, but to inform the ALEC that BellSouth has received its order. (Tr. 228, 231). Importantly, the FOC is not a commitment to provision by a certain date because, at the time the FOC is issued, BellSouth has not (1) ensured that the facilities necessary to complete the order are in place and working; and (2) notified Covad that BellSouth can in fact provision the facilities. (Tr. 233, 5 14). As admitted by Covad witness Allen, when Covad receives a FOC with a due date that Covad selected, it is possible that BellSouth may not have facilities to serve Covad's customer at that time. (Tr. 233).

In addition, other types of events that could affect the provisioning date include work force issues and "Acts of God." (Tr. 5 13).

Accordingly, to do what Covad requests would result in additional costs being incurred in the ordering phase – i.e. checking facilities prior to issuing the FOC. Id; Tr. 237. However, Covad refuses to pay any additional costs that BellSouth would incur to set up a guaranteed delivery system. (Tr. 237, 238). Additionally, because BellSouth does not provide such a facilities check for its retail customers, Covad agreed that, with this issue, it is requesting something more than what BellSouth currently offers its own customers. (Tr. 233-34). Further, Covad is unwilling to take into account the time it would take to do a facilities check in setting the interval for the loop provisioning. (Tr. 239).

In contrast to Covad's proposal, BellSouth's proposal is reasonable as BellSouth is only asking that Covad pay for the increased costs associated with guaranteeing that an order will be provisioned on the original due date given. For these reasons, the Commission should adopt BellSouth's proposed language for this issue.

**Issue 7(a): When BellSouth provisions a non designed xDSL loop, under what terms, conditions and costs, if any, should BellSouth be obligated to participate in Joint Acceptance Testing to ensure the loop is properly provisioned?**

*** Joint Acceptance Testing is not appropriate for this type of loop unless Covad is willing to pay for this test at time and material rates. ***

BellSouth will perform testing needed to provision a loop to ensure that a nondesigned xDSL loop ordered by Covad meets the specifications for that particular loop, which are set forth in BellSouth's Technical Requirement 73600 (TR 73600). (Tr. 659). The costs for performing these tests and for provisioning the loop are included in the nonrecurring charge for the nondesigned loop. Id. However, this charge does not include tests beyond what is required to provision the loop, which includes joint-acceptance testing, and thus the rate that Covad pays for

the nondesigned loop does not include joint acceptance testing. Id. Such additional testing would require a dispatch on every loop and would redefine the product, which BellSouth created pursuant to the requests of ALECs. (Tr. 676). If Covad wants testing beyond that which is recovered in the rates for a nondesigned loop, Covad should pay BellSouth the cost of this additional testing at time and material rates, which it refuses to do. (Tr. 666).

It is important to remember that BellSouth developed the nondesigned loop at the requests of ALECs in response to the ALECs' desire for an xDSL loop with a lower non-recurring cost than a designed loop. (Tr. 665). The designed loop costs more because there is more work content associated with providing it. Thus, the ALEC will receive a more "robust loop" that has a much greater chance of providing ADSL service than the nondesigned loop. (Tr. 687-88, 691). As a result, the nonrecurring charges associated with a nondesigned loop is $44.69 as compared to a minimum of a $199.01 for a designed loop. (Tr. 666). To include joint acceptance testing in the rate for a non designed loop would defeat the purpose of having a nondesigned loop with lower nonrecurring charges than the designed loop. Id.

Further, Covad's proposed rate of a $40 flat fee for joint acceptance testing per non-designed loop if BellSouth delivers functional non designed loops on time, 90 percent of the time is inadequate. The rate for such additional testing, which is based on time and material, is $78.92 for the first half hour and $23.22 for each additional half hour. (Tr. 667). The $40 proposed by Covad does not even cover the first half-hour of BellSouth's costs. Id. The sole evidence Covad presented in support of this rate was a rate set forth in an agreement with SBC. Covad presented no evidence to even suggest that BellSouth's prices do not accurately reflect its costs for joint acceptance testing.

Additionally, Covad's requirement that BellSouth deliver functional loops on time, 90 percent of the time is unreasonable because, although BellSouth guarantees that a non designed loop will meet specific parameters, BellSouth does not guarantee that the loop will work with ADSL. (Tr. 679).[11] Thus, Covad's "functioning" requirement is flawed because the non designed loop may be "functional" because it meets BellSouth's specifications but unable to provide ADSL service.

In sum, although BellSouth does not oppose performing joint acceptance testing on nondesigned loops, Covad should be required to pay for this additional test at time and material rates to allow BellSouth to recover its costs.

**Issue 7(b): Should BellSouth be prohibited from unilaterally changing the definition of and specifications for its loops?**

*** To insure that BellSouth can adapt its loop offerings to newly developed standards and changes in technology, BellSouth needs to retain the flexibility to alter its loop definitions and specifications. ***

With this issue, Covad is attempting to prohibit BellSouth from changing loop definitions and specifications. Covad's position is that the loop definitions and specifications must remain the same during the term of the agreement.[12] See Exhibit 39. BellSouth is not attempting to reserve the right to change technical specifications detailed in the contract between BellSouth and Covad. (Tr. 660) Rather, BellSouth is only requesting the right to change the standards and specifications for loops that Covad acquires that are defined through BellSouth's TR 73600,

[11] With a designed loop, however, for a greater price, Covad would receive a higher quality loop with additional testing. As a result, a designed loop has a much greater chance of providing ADSL service. (Tr. 679,691).

[12] At the hearing, Covad stated that BellSouth could change the technical specifications of a loop if Covad agreed to the changes and the parties amended the agreement. (Tr. 249, 252). As made clear by the Exhibit 39, this is not part of Covad's proposal, which clearly prohibits BellSouth from making any changes, without exception, during the term of the agreement.

which change from time to time. Id. Indeed, Covad witness Allen agreed that (1) BellSouth's network changes from time to time; (2) a carrier can provide a finished service over a variety of different technologies; and (3) the technical specifications for the facilities used to provide service may change, (Tr. 248, 249). Furthermore, ALECs are given 60 days notice when standards are being updated. (Tr. 661).

In addition, prohibiting BellSouth's ability to change loop definitions and specifications as defined in the TR 73600 constitutes an unreasonable constraint on BellSouth's ability to continue to meet the needs of ALECs in Florida. (Tr. 660). Under Covad's proposal, BellSouth would not have the right to change technical specifications of an xDSL loop even if (1) that change has no impact on Covad's customer; or (2) a new technology came out that provided greater enhancements for the xDSL loop and did not affect service but changed the noise parameters. (Tr. 251, 252). In effect, Covad's proposal would prevent BellSouth from upgrading its network, even if other ALECs wanted the upgrade, because its contract with Covad, executed two years ago, prohibits either party from changing the then current definitions and specifications set forth in the TR 73600, Such a proposal should be rejected.

**Issue 8: When Covad reports a trouble on a loop where, after BellSouth dispatches a technician to fix the trouble, no trouble is found but later trouble is identified on that loop that should have been addressed during BellSouth's first dispatch, should Covad pay for BellSouth's cost of the dispatch and testing before the trouble is identified?**

*** When Covad causes BellSouth to dispatch a technician to test a loop that Covad has reported as having a problem, and no problem is found on BellSouth's facilities, Covad should pay BellSouth's expenses incurred as a result of the unnecessary dispatch. ***

The crux of this issue is who should bear the cost of a dispatch when Covad reports a trouble but no trouble is found by the technician but is later identified. Under BellSouth's proposal, when Covad causes BellSouth to dispatch a technician to test a loop that Covad has

reported as having a problem and no problem is found on BellSouth's network, Covad would pay BellSouth's expenses incurred as a result of the unnecessary dispatch. (Tr. 5 18). If BellSouth reports no trouble found and trouble is later found on the loop that should have been found on the original dispatch, BellSouth will either not bill Covad for the dispatch or will credit Covad for the dispatch charge. (Tr. 556).

Covad's proposal, on the other hand, would prohibit BellSouth from charging Covad for the dispatch when BellSouth reports "no trouble found" in all cases, even if there is never any trouble found on the loop. (Tr. 261). Covad's flawed reasoning for this proposal is that it is "trying to build an incentive . , . to get BellSouth to actually get it right the first time. And the way we feel that that's best addressed is for no charges to apply to no trouble found." (Tr. 262). Covad witness Allen stated that Covad's incentive under its proposal would be that Covad would not turn in a trouble unless there was a problem with a loop. However, in response to a question from Commissioner Palecki, Mr. Allen stated that "mistakes are going to be made." (Tr. 268).

The unreasonableness of Covad's position is further apparent by the following facts. First, Mr. Allen agreed that, under Covad's proposal, there would be no consequence to Covad if Covad turns in a trouble ticket and no trouble is found on the loop. Second, Mr. Allen agreed that BellSouth incurs a cost when it dispatches a technician and no trouble is found, which BellSouth would not be able to recover. (Tr. 262, 265). Third, Covad's proposal fails to take into account that Covad has some responsibility before a ticket is closed. Closing trouble tickets is a two-party process. (Tr. 556). If, after BellSouth checks for trouble on a loop and no trouble is found but Covad is still experiencing problem, Covad is not required to close the trouble ticket. Id. In fact, as stated by BellSouth witness Cox, "BellSouth keeps a trouble ticket open automatically for 24 hours to allow Covad to continue testing." Id. Consequently, adopting

Covad's language would allow Covad to benefit from its own error in agreeing to close a trouble ticket that should not have been closed. Fifth, if the Commission approved Covad's proposal, all other ALECs could avoid paying charges associated with dispatches for trouble tickets by opting into Covad's agreement. (Tr. 270).

The fact that Covad may have to go through the billing dispute process to obtain a credit for a trouble ticket charge that was charged in error is not sufficient to adopt Covad's proposed language. As identified by Covad witness Allen, there is an escalation list that allows the parties to cut-through the "red tape" on specific orders. (Tr. 267, 69). For these reasons, the Commission should adopt BellSouth's proposed language as to this issue.

**Issue 11: What rate, if any, should Covad pay BellSouth if there is no electronic ordering interface available, when it places a manual LSR for:**

**(a) an xDSL loop?**

**(b) line sharing?**

*** Manual ordering charges should apply when Covad places an order manually, for its own business reasons or because BellSouth does not have an electronic interface. The rate for manual service orders, Cost Element Number N.1.2, adopted in Docket No. 990649-TP, is appropriate. ***

BellSouth's obligation to provide access to its Operational Support Systems ("OSS") requires access "in substantially the same time and manner" that BellSouth provides to itself. *See First Report and Order, In re: Implementation of Local Competition Provisions in the Telecommunications Act of 1996,* 11 FCC Rcd 15499, CC Docket No. 96-98, ¶ 518 (Aug. 8, 1996), *vacated in part, Iowa Utils. Bd. v. FCC, 120* F.3d *753* (8th Cir. 1997), *rev'd in part, aff'd in part sub nom.* AT&T *Corp.* v. *Iowa Utils. Bd.*, 119 S. Ct. 72 1 (1999) (hereinafter referred to as the *"First Report and Order").* Notably, access to OSS includes *manual* systems, together with associated business processes. See Third Report and Order and Fourth Further Notice of

Proposed Rulemaking, CC Docket 96-98, FCC Order No. 99-238, ¶ 425 (Nov. 5, 1999) (hereinafter referred to as the *"Third Report and Order'?*.

The rates BellSouth proposes to charge Covad for Local Service Requests ("LSRs") submitted manually are the final rates adopted by the Commission in Docket 990649-TP. Those rates should apply whenever Covad submits an LSR manually, unless BellSouth's electronic ordering systems are malfunctioning. As Ms. Cox explained in her pre-filed testimony, "[w]hen problems with the electronic ordering systems prevent Covad from placing electronic orders that BellSouth normally accepts, Covad may order the services it desires manually and pay only the electronic ordering rates." (Tr. 559). Except for situations when BellSouth's electronic systems are not functioning properly, Covad should pay the manual ordering rate for orders submitted manually.

Covad has proposed the following language for Issues 1 l(a) and (b):

> For network elements and service for which BellSouth makes available an electronic ordering mechanism, Covad shall pay the manual ordering charge when it submits a manual order, unless Covad submitted the manual order when the electronic systems were non functional for any reason. For network elements and services for which BellSouth does not make available an electronic ordering mechanism, Covad shall pay the electronic ordering rate for all manually submitted orders.

Hearing Exh. 39 at p. 8. The first sentence of Covad's proposed language is acceptable to BellSouth. The dispute between the parties on this issue concerns the second sentence, which relieves Covad of the obligation to pay manual ordering charges whenever BellSouth has no electronic ordering system in place. That is, Covad wants to submit manual orders and pay as though it were submitting electronic orders even in situations where BellSouth's retail operations do not have the ability to place orders electronically for certain products or services.

The Commission considered this issue in the MCI Order. In that proceeding, the Commission concluded that manual ordering charges are appropriate for manually submitted orders unless an ALEC can show that it cannot submit orders electronically for wholesale services while BellSouth has the ability to submit orders electronically for the retail services that are the analog to those wholesale services. MCI Order at 19. Specifically, the Commission stated:

> [W]e find that where it is determined that BellSouth has an electronic interface in place for its retail offerings, but there is no analogous system in place for comparable services obtained by an ALEC, it would be a reasonable presumption that an ALEC is being denied a meaningful opportunity to compete; where such a finding is made, BellSouth should charge an electronic ordering charge. However, such a determination will need to be made on a case-by-case basis.

Id. The Commission made it clear, however, in the context of a specific issue raised by MCI WorldCom, that "[i]n the absence of such a showing, a manual ordering charge is reasonable." Id. At the hearing, Mr. Allen agreed that, if an electronic ordering process was not available to either BellSouth's retail operations or to Covad, then Covad should pay the manual ordering charge:

> Q. Let's assume that BellSouth has a complex business product that can be ordered for BellSouth's retail customers only through a manual process. You understand that assumption?
>
> A. Yes.
>
> Q. Assume that Covad is offering an unbundled network element or is purchasing an unbundled network element from BellSouth that is the analog, the wholesale analog, to that service, and it also can only be ordered manually. Do you understand that assumption?
>
> A. Yes.
>
> Q. In that circumstance, is it Covad's position that it should pay the manual ordering charges associated with submitting an order?

A. Yes. If that was truly the case, I'd say that would probably be -- that's a hypothetical, but in reality, your retail services have -- your customers call a service rep. They place an order through an electronic system. What we're saying is that the electronic systems that -- and these all do have parallels -- there should be an electronic interface available to us, otherwise and I thought I did as well remember this from Ms. Cox testimony, that the electronic interfaces should be available. If they go down, we shouldn't have to pay to fax over manually. I think that's what I do remember she addressed. However, services that we don't have a system ready for line sharing. We don't have one for IDSL. We don't have one for UCL. The ones for the other xDSL services do not -- or are not available 100 percent of the time to use.

The point is that for us to be as efficient and effective as possible, we need to have electronic interface and we shouldn't be penalized by having to order those services manually.

(Tr. 273-74). To summarize Mr. Allen's testimony, Covad agrees that it must pay the manual ordering charge if neither BellSouth nor Covad may place an order electronically for a particular service (although Covad's language does not conform to Mr. Allen's testimony), but Mr. Allen theorizes that BellSouth can always place orders electronically. There is no record evidence to support Mr. Allen's claim on this point. In fact, Ms. Cox testified that, to the extent BellSouth has the capability to order services electronically, it makes an electronic ordering system available to ALECs for analogous services. (Tr. 620). Neither Mr. Allen nor any other witness on behalf of Covad offered any evidence to support its claim that BellSouth has electronic ordering capability for services that Covad must order manually.

Taking into consideration the Commission's conclusion in the MCI Order that any alleged disparity must be considered on a "case-by-case basis," the Commission should conclude that Covad has made no showing of disparity in this case. Moreover, the Commission should reject Covad's proposed language in this issue because it would not permit BellSouth to charge a manual ordering charge even in circumstances where neither BellSouth nor Covad have

the ability to submit electronic orders. The Commission should uphold BellSouth's right to recover Commission-approved manual ordering charges for orders Covad submits manually.

**Issue 12: Should Covad have to pay for a submitted LSR when it cancels an order because BellSouth has not delivered the loop in less than five business days?**

*** Once Covad submits an LSR, BellSouth begins processing Covad's order. Even if Covad later withdraws its request, Covad is responsible for paying whatever charges are appropriate to reimburse BellSouth for the work done on Covad's behalf. ***

Covad and BellSouth agree that "Covad will incur an OSS charge for an accepted LSR that is later canceled by Covad." Hearing Exh. 39, at p. 8. But, Covad has proposed that it be relieved of its obligation to pay a cancellation charge if "BellSouth does not deliver the loop in less than five (5) business days." Id.

At the hearing, Mr. Allen suggested that Covad would only ask to be relieved of its obligation to pay a cancellation charge if BellSouth failed to deliver the loop within five days and Covad's customer had cancelled its order with Covad as a result. (Tr. 276). But, Covad's proposed language contains no such limitation relating to the customer's actions. Under Covad's proposed language, Covad may cancel any order with impunity if BellSouth has not delivered the loop within five days, irrespective of whether the end user would have cancelled an order.

Moreover, Covad's proposal amounts to an additional performance penalty. BellSouth has an obligation to provide nondiscriminatory access to Covad. BellSouth must demonstrate, to this Commission and the FCC, that it is providing such access, prior to receiving authority to offer interLATA services in Florida under 47 U.S.C. § 271. Depending on the loop type, BellSouth, therefore, must demonstrate that it provides loops to all ALECs in the same time and manner as it provides analogous services to its retail customers. Absent such an analogue, BellSouth must demonstrate it is meeting a defined benchmark. In Docket No. 000121-TP, BellSouth has proposed two provisioning measurements, Order Completion Interval and Percent

Missed Installation Appointments disaggregated by 12 levels of loop sub-metrics, which clearly demonstrate BellSouth's performance for delivering loops. (Tr. 561).

Plainly, BellSouth has strong incentives to meet its loop intervals. Indeed, Mr. Allen stated at the hearing that "there should be no incentive anyway to delay delivery of a loop to Covad on the part of BellSouth." (Tr. 277). If BellSouth fails to meet its loop delivery intervals, the remedy for that failure may be found in the performance penalties the Commission adopts in Docket No. 000121-TP. If Covad's proposed language on this issue is adopted, Covad could receive performance penalties and be relieved of cancellation charges for the same event. Such double recovery would put Covad in a different position than all other ALECs in Florida. The Commission should reject Covad's proposed language.

**Issue 16: Where should the splitters be located in the central office?**

*** Splitters should be located in the common areas where the ALECs are collocated. Covad is not entitled to dictate where splitters are located in BellSouth's central offices. Locating the splitters on the MDF as proposed by Covad is very inefficient due to the frame space that this approach requires. ***

The most efficient architecture to deploy line sharing when BellSouth owns the splitter is to place the splitter in a rack either in the common area close to the collocation area or in a rack in the BellSouth lineup. (Tr. 808). Moreover, while BellSouth recognizes that locating splitters on a central office frame is technically feasible, splitters should be located in a relay rack in the ALECs' common area or in the BellSouth line up of equipment. Id. at 808-09.

Mr. Williams explained that a frame-mounted splitter is less efficient than a rack-mounted splitter:

> A frame located splitter arrangement requires six frame-mountable splitter blocks, each of which is capable of serving sixteen end user line sharing lines. This is inefficient due to the frame space that approach requires. This architecture requires 6 blocks to serve 96 end user lines. BellSouth's preferred rack-mounted architecture requires four frame mounted blocks, or 89 type blocks, which can

> serve 96 end user lines. The rack-mounted architecture is one third more efficient than mounting the splitter on the frame. The frame-mounted architecture proposed by Covad would cause BellSouth to prematurely exhaust its frame and is, therefore, much less efficient than the rack-mounted approach.

Id. at 809. On cross-examination, Mr. Williams explained that, while Covad's proposal eliminates cabling costs, it adds "mounting blocks on the frame." (Tr. 839). And, "the cost of cabling is miniscule compared to taking up space on the frame." Id.

Moreover, as Mr. Williams explained, BellSouth found during the Line Sharing pilot in Atlanta, Georgia that main distributing frame-mounted splitters could not accommodate the manual test access jacks (the so-called "bantam jacks") that BellSouth provides to each ALEC. These bantam jacks provide the ALEC with direct access to the outside plant cable pair for testing. In BellSouth's proposed architecture, the bantam jacks are located adjacent to the rack-mounted splitter shelves in the ALECs' common area. Id. Mr. Riolo admitted that bantam test jacks could not be used with a frame-mounted splitter. (Tr. 475).

An additional problem with Covad's proposal is that splitters cannot be mounted on COSMIC frames. (Tr. 823). Mr. Williams explained that most of the central offices in BellSouth's region where ALECs have ordered splitters have COSMIC frames. (Tr. 823). Therefore, Covad's proposed configuration cannot be implemented in many of the central offices where ALECs, including Covad, have ordered splitters. Ms. Kientzle ignored this fact, dismissing BellSouth's actual central office equipment as not "forward-looking." (Tr. 469). But, Covad offered no evidence to suggest that COSMIC frames are not "forward looking." Indeed, Mr. Riolo admitted that a "COSMIC frame is a more current frame design." (Tr. 471). Thus, while it may be convenient for Covad to ignore the facts when those facts conflict directly with its proposal, Covad has offered no legitimate support for its proposal.

Ultimately, BellSouth should have control over the design of its central offices -- not Covad. Covad is merely trying to identify any potential cost savings it might gain, even if such cost savings (1) are illusory; (2) ignore the realities of BellSouth's network equipment; or (3) come at the expense of other ALECs. The Commission should reject Covad's proposal on this issue.

**Issue 18: What should the provisioning interval be for the line sharing unbundled network element?**

*** BellSouth owes Covad nondiscriminatory access to its unbundled network elements. The current provisioning intervals for Covad and the other ALECs in Florida are comparable to the provisioning for BellSouth's own ADSL service, which is all that can be required of BellSouth.***

Covad has proposed a phase-in approach interval that will eventually reduce the interval for provisioning line sharing to 24 hours. (Tr. 811; Exhibit 39). The appropriate interval for line sharing, however, should be one that is comparable to the interval BellSouth provides for its own ADSL customers. (Tr. 812). BellSouth's planned interval for ADSL service for its customers is four days. Id. BellSouth's proposal for line sharing is to return to the ALEC a FOC no later than the next day after an electronic order and 18 hours after a manual order. (Tr. 826). BellSouth's proposed provisioning period is three days after the FOC confirmation. Id.

While it may be possible to provision line sharing in some case in less than three days if all information flows through all of BellSouth's provisioning systems, three days will be required if orders fall out for manual handling. Covad witnesses Riolio and Kientzle agreed that fallouts for manual handling occur, albeit for a limited number of orders. (Tr. 826; 459). Accordingly, to insure that all parties, including the end user, have appropriate expectations, the appropriate interval should be three days after the return of the FOC, which places the line sharing interval at parity with BellSouth's own ADSL offering. Id.

**Issue 21: Should BellSouth provide accurate service order completion notifications for line sharing orders?**

*** BellSouth agrees that it must provide accurate information to the ALECs when line sharing orders have been completed. ALECs may rely on the electronic completion notice for orders submitted electronically and may use the CLEC Service Order Tracking System to obtain CN status for manually submitted requests. ***

BellSouth agrees that it must provide accurate information to ALECs when line sharing orders have been completed. BellSouth's current notification procedures are in fact providing such information to ALECs. For example, BellSouth utilizes a Completion Notification ("CN") to convey completion of all electronically submitted Local Service Requests ("LSR"). (Tr. 928). The CN provides the ALEC with the information required for control and tracking of requests. Id. CNs are delivered to the ALEC through an Electronic Data Interexchange ("EDI") interface or through other negotiated electronic processing options. (Tr. 929).

Regarding Covad's concern about erroneous completion notices (Tr. 177), BellSouth witness Wilson testified that BellSouth has adopted a new procedure that corrects this error. (Tr. 944). This error previously resulted when the billing order would be completed on the due date because no work was required but the provisioning order would not be completed because the assignments given to BellSouth by Covad for the connecting facility or cross-connect might not work. (Tr. 944). In these situations, Covad would receive a CN but the provisioning portion of the order was not actually complete. Id.

To remedy this problem, BellSouth added a Field Identifier, which is referred to as a frame-ready date. This date precedes the due date for the provisioning order. Id. If, on the frame-ready date, the central office technician determines that the wiring is adequate, he will work on it. However, if the wiring is not adequate, rather than letting the order automatically complete, the technician issues a jeopardy notice to the Local Carrier Service Center ("LCCS"),

which cancels the orders and notifies Covad. (Tr. 944-45). Accordingly, BellSouth has implemented a procedure that remedies Covad's concerns regarding the automatic CN. (Tr. 945).

Regarding manually submitted orders, BellSouth does not provide CNs for manually submitted orders. Id. However, an ALEC can determine the status of a manually submitted LSR via BellSouth's CLEC Service Order Tracking System ("CSOTS"), which is available on BellSouth's web site. (Tr. 930). CSOTS information is derived from the BellSouth Service Order Communications System (SOCS), which communicates all service orders to other BellSouth departments for provisioning and delivery. (Tr. 930).

Additionally, BellSouth is now providing a daily summary of work orders worked through the SWITCH CFA report. (Tr. 949). This report is posted on BellSouth's web site and can be assessed by Covad to ascertain the status of all of its connecting facilities. Id. The report is now updated daily and will allow Covad to determine whether every connecting facility assigned to Covad is working, pending, or idle. Id. Thus, Covad's request that the SWITCH report be updated daily is satisfied. See Tr. 146.

Moreover, Covad's request for a daily completion report that is e-mailed to Covad is satisfied by the updated SWITCH CFA report. In fact, Covad witness Allen testified that Covad is no longer receiving a daily Completion Report via e-mail from Quest because Quest, like BellSouth, implemented a daily, updated web-based report. (Tr. 198, 99). Thus, no other ILEC currently provides a daily completion report to Covad. (Tr. 199).

Accordingly, as made clear above, most if not all of Covad's concerns with BellSouth's notification procedures have been addressed. Therefore, the Commission should adopt BellSouth's language as to this issue

**Issue 22: Should BellSouth test for data continuity as well as voice continuity both when provisioning and repairing line shared loops?**

*** BellSouth is willing to test continuity of the data circuit wiring. BellSouth also tests the wiring of the high frequency spectrum. BellSouth uses a Line Sharing Verification Transmitter (LSVT) to test the wiring of the loops for line sharing. ***

BellSouth is responsible for correctly wiring ALEC's line sharing orders. BellSouth is willing to test the continuity of its wiring. (Tr. 813). BellSouth has made it clear that in addition to testing the voice service it will also test the wiring of the high frequency spectrum for line sharing orders. In January 2001, BellSouth announced to the line sharing collaborative that it would begin using the new Line Sharing Verification Transmitter (LSVT), to test the wiring of the high frequency spectrum within its central offices. Id. The device is now deployed and use of this device has been included in procedures for installation and maintenance of line sharing loops. Id. The dispute between the parties does not concern tests for the continuity of BellSouth's wiring. Covad wants BellSouth to use a piece of equipment known as the Sunset test set to test Covad's data signal. BellSouth is under no such obligation.

BellSouth uses Sunset test equipment to test its own ADSL data signal from its DSLAM. (Tr. 820). BellSouth has no responsibility to test Covad's data signal from its DSLAM. While Covad states that BellSouth's test equipment is compatible with Covad's equipment, other ALECs use different data equipment with different protocols that require different test equipment. Obviously, BellSouth must perform nondiscriminatory testing of line sharing orders. It would be unreasonable for BellSouth to have several test sets compatible with the various ALECs involved with line sharing. BellSouth's use of the LSVT confirms that the data portion of the line share circuit is correctly wired and this should meet its responsibility. Id. The FCC addressed the request for ILECs to test ALEC's data service and rejected that notion in its Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-

*98, In the Matter of Deployment Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of1996* (rel. Dec. *9,* 1999) *(Line Sharing Order)* and concluded that ILECs would not test an ALEC's xDSL service:

> Bell Atlantic also states that it will not be able to use its own equipment to test the data portion of the shared line, making Bell Atlantic's ability to maintain those competitors' xDSL services 'more difficult'. The record does not indicate nor do we foresee, that incumbent LECs such as Bell Atlantic would have occasion to test a competitive LEC's xDSL equipment or products.

Id. at ¶ 123 (emphasis added). The Commission should not order BellSouth to perform testing for Covad that (1) goes well beyond the obligations of the 1996 Act and (2) likely could not be performed for other ALECs that use equipment incompatible with BellSouth's Sunset test sets.

**Issue 23: Should Covad have access to all points on the line shared loop?**

*** BellSouth is responsible for the quality of wiring at its frame. It would not be appropriate to allow individuals not employed by BellSouth to perform work at the frame because of the potential cost and service disruption that errors by ALEC technicians might cause. ***

Covad believes it should be allowed to test the loop at any point of interconnection within BellSouth's central office, even in places that Covad currently does not have access. (Tr. 813). The Commission should reject this proposal because BellSouth, and BellSouth alone, is responsible for the wiring at its frame.

Mr. Williams explained the basis for BellSouth's concerns in his pre-tiled testimony:

> To insure quality service is delivered to its customers, BellSouth tracks all wiring changes performed on their central office frames. This tracking includes all wiring and diagnostic work performed, the date and time of the activity, and the technician performing the work. This information is used to locate wiring problems and to identify training needs. BellSouth technicians are held accountable for the quality of their work through this system.
>
> BellSouth has no control over the training of CLEC technicians nor their experience levels. When work is performed at the frame, mishaps or accidents can occur that could be service effecting. Unauthorized wiring changes could be

> made without supporting systems to track the changes. If CLEC technicians perform work at the frame, BellSouth tracking information is incomplete or inaccurate. It may be impossible to re-create changes performed by a technician unfamiliar with BellSouth's equipment and procedure

(Tr. 8 14-15). If Covad's proposal is adopted, any ALEC opting into Covad's agreement would also have the right to test at the frame. If numerous ALECs are working on BellSouth's frame, the possibility of service interruptions increase exponentially. If Covad desires to test the loop, a better solution would be to utilitize the bantam test jack. (Tr. 826-27).

The Commission should reject Covad's proposal.

**Issue 24: Are the rates proposed by BellSouth for unbundled loops and line sharing compliant with TELRIC pricing?**

*** The Commission should adopt the rates BellSouth proposed in this docket for line sharing with the understanding that any final adjustments ordered in Docket No. 990649-TP, if applicable, can be incorporated at a later date. ***

The parties could not agree to rates for line sharing during negotiations. Moreover, the stipulation that established Docket No. 990649-TP specifically excluded line sharing.

The cost methodology BellSouth used for line sharing is the same as the cost methodology BellSouth filed in Docket No. 990649-TP. (Tr. 750). BellSouth requests that the Commission set rates for line sharing based on the cost studies it submitted, recognizing that any applicable final adjustments to BellSouth's cost studies in Docket No. 990649-TP should be reflected in the rates for line sharing established in this proceeding. Id. The Commission approved a similar line sharing rate proposal in the MCI Order. The cost study submitted in this docket is virtually the same as the study submitted in the MCI arbitration, although, as Mr. Shell explained, the cost study was updated in several ways for use in this proceeding:

> The first cost study update was to add new elements J.4.6 and J.4.7. These elements would apply when the ALEC owned splitter is placed in BellSouth's central office. The second update removes the recurring cost per line activation for element J.4.3 pursuant to a region-wide settlement with DATA ALECs.

> Under the settlement, BellSouth will charge $.61 per month as an interim rate, subject to retroactive true-up once a permanent rate has been established. The final update was to correct the job function code for the network group that would build the customer profile/inventory for the COSMOS/Switch system and to correct the cost element location life. Initially, BellSouth assumed the work could be done by a non-management person. However, due to the complexity of the work, a management employee is required. As a result, the job function code was changed to reflect that management level. The cost element location life was corrected which resulted in a decrease in cost.

(Tr. 73 l-32).

The costs identified by BellSouth in its line sharing cost study reflect the costs BellSouth expects to incur in providing unbundled network elements and combinations to competitors on a going-forward basis in the state for Florida. (Tr. 730). These costs were based on an efficient network, designed to incorporate currently available forward-looking technology, but recognizing BellSouth's provisioning practices and network guidelines, as well. Id. Additionally shared and common costs were considered. Id.

In criticizing BellSouth's cost study, Covad focused on several input assumptions. For example, Covad's witnesses challenged BellSouth's assumption regarding the placement of the splitter on a relay rack in the ALECs' common area instead of mounted on the frame, as Covad suggests. The problems with Covad's assumption of a frame-mounted splitter are discussed in Issue 16, above. Moreover, as Mr. Shell explained, the cost study assumed a fixed amount of cabling (150 feet), so Covad's concern about the distance from the splitter to the MDF is misplaced. (Tr. 740). In addition, the cable placement expenses are the same whether the distance between the splitter and the MDF is 1 foot or 150 feet. Id. Covad's argument that there should be no nonrecurring costs for a BellSouth-owned splitter arrangement is also incorrect. The costs included in the nonrecurring calculations reflect activities that occur once BellSouth receives a firm order from the ALEC for the splitter. (Tr. 742). For example, the splitter

equipment and cable/pair information must be inventoried. Also, these nonrecurring costs are incremental to any of the labor costs included in the recurring cost development. The costs associated with installing the splitter are reflected in the recurring cost calculation via the in-plant loadings. Id.

Covad's "recalculation" of BellSouth's line sharing costs should be rejected. Mr. Shell explained the flaws in Covad's approach:

> 1) It does not accurately reflect the costs BellSouth will incur in providing Line Sharing arrangements.
>
> 2) The analysis relies on input from another company (Bell Atlantic NY) and thus, has no bearing on the costs of BellSouth's operations in Florida.
>
> 3) Legitimate costs are ignored, e.g., ad valorem and other taxes, shared costs, sales tax, and gross receipts tax.
>
> 4) Required equipment and support investments have been excluded . . . .
>
> 5) Nonrecurring time estimates do not reflect the activities that are required to provision Line Sharing.

(Tr. 742-43). In sum, Covad's witnesses have offered a number of faulty criticisms of BellSouth's study, but none has any merit. The Commission should approve BellSouth's line sharing cost study and direct the parties to incorporate the cost-based rates derived therefrom (as set forth on Hearing Exh. 15) into the parties' final agreement.

**Issue 25:** **In the event Covad desires to terminate its occupation of a collocation space, and if there is a waiting list for space in that central office, should BellSouth notify the next ALEC on the waiting list to give that ALEC the opportunity to take that space as configured by Covad (such as racks, conduits, etc.), thereby relieving Covad of its obligation to completely vacate the space?**

*** Covad is not entitled to learn which ALECs are on the waiting list for a particular central office. And, BellSouth has no obligation to contact ALECs on a waiting list on Covad's behalf and attempt to broker a transaction to minimize Covad's expenses associated with vacating a central office. ***

The dispute with this issue centers on whether BellSouth should be required to inform Covad of the identity of the first ALEC on the waiting list for collocation space when Covad decides to terminate its occupation of certain collocation space. BellSouth is obligated to notify the Commission and the telecommunications carriers on the waiting list within two days of BellSouth knowing that collocation space is available. (Tr. 526). However, BellSouth does not believe that it can reveal the identity of ALECs who are seeking space in specific central offices, because many ALECs consider that information to be proprietary business information. (Tr. 526, 27). Additionally, BellSouth is not required by either the Act or the Commission's rules to provide this information to Covad. Therefore, the Commission should reject Covad's proposed language.

Nonetheless, if the Commission decides to require BellSouth to provide Covad the requested information, notwithstanding the confidentiality issues, BellSouth would certainly comply with the Commission's order. (Tr. 528). In that situation, however, BellSouth has two additional concerns. First, because BellSouth is required to provision collocation space within specific timeframes, any time lost as a result of negotiations between Covad and an ALEC should not be counted as part of BellSouth's interval to provide the collocation space. Id. BellSouth, in that scenario, would not have any control over the progress or status of the negotiations and should not be penalized for ALECs' failure to reach an agreement. Covad witness Seeger agreed that Covad's proposal could effect the interval within which BellSouth is required to provide collocation space and agreed that it would be reasonable to exclude negotiation time between ALECS from BellSouth's collocation interval. (Tr. 325, 26). Accordingly, if the Commission requires BellSouth to provide this information to Covad, any

negotiation time between Covad and another ALEC should be excluded from BellSouth's collocation interval.

Second, while BellSouth is not opposed to Covad selling its collocation equipment, BellSouth cannot be put into a position of becoming an equipment broker for Covad or any other ALEC. (Tr. 528). Contrary to witness Seeger's statement that Covad does not intend for BellSouth to become a broker (Tr. 3 10), Covad's proposed language would require just that as it provides:

> If BellSouth is able to place another CLEC in the vacated Covad space, Covad shall not be required to return the space to its original condition. . . If BellSouth is able to rent the vacated collocation space within six months, Covad shall be reimbursed for the pro rata share of the collocation space preparation it paid.

Exhibit 39. Clearly, Covad's proposed language contemplates BellSouth having some type of role in the sale or transfer of Covad's collocation space, which is unacceptable and goes beyond its obligations under the Act and the Commission's rules. Therefore, if the Commission requires BellSouth to inform Covad of the identify of the first ALEC on the waiting list, BellSouth's sole obligation in the process should be to only provide the name of the ALEC to Covad. Anything more would place an onerous burden on BellSouth.

**Issue 29: What rates should Covad pay for collocation?**

*** The Commission should adopt BellSouth's proposed rates for collocation in this docket with the understanding that any final adjustments ordered in Docket No. 990649-TP, if applicable, (and eventually Docket Nos. 98 1834-TP/99032 1 -TP for collocation) can be incorporated at a later date. ***

The cost development for collocation rates[13] followed the same cost methodology used in Docket No. 990649-TP. (Tr. 732). Therefore, the Commission should set rates in this docket for collocation with the understanding that any final adjustments ordered in Docket No. 990649-TP, if applicable, (and eventually Docket Nos. 981834-TP/990321-TP for collocation) can be incorporated at a later date.

BellSouth proposed cost-based rates (as set forth in Hearing Exh. 15) for the following:

Physical Collocation

Physical Collocation allows an ALEC to install its equipment and facilities within leased floor space in BellSouth's Central Offices to the extent such collocation is technically feasible and space is available. This arrangement enables the ALEC to connect to the BellSouth network. The ALEC may choose a caged or cageless arrangement. Two types of power are also offered to the ALEC; power per fused amp and AC power, where the collocator provides its own DC power plant.

Adjacent Collocation

Adjacent Collocation is another form of collocation. Physical collocation occurs inside the BellSouth central office building. Adjacent Collocation is outside the BellSouth central office building, but on BellSouth "adjacent" property. BellSouth will provide adjacent collocation arrangements where space within the Central Office is exhausted. This is subject to technical feasibility and where the adjacent arrangement does not interfere with access to existing or planned structures or facilities on the Central Office property. Adjacent collocation is also limited to locations permitted by zoning and other applicable state and local regulations. The adjacent arrangement shall be constructed, procured, maintained, and operated by an ALEC and in conformance with BellSouth's guidelines and specifications.

Physical Collocation in the Remote Terminal

Remote site locations include cabinets, huts, and controlled environmental vaults ("CEVs") owned and leased by BellSouth that house BellSouth network facilities. Remote Site Physical Collocation can occur where technically feasible, and where space exists. The ALEC must use the remote collocation space for the purposes of installing, maintaining, and operating its equipment used or useful to

[13] BellSouth's proposed physical collocation rates are generally consistent with the rates BellSouth has set forth in its physical collocation tariff, Section E20.2 of the Access Services Tariff. (Tr. 732-33).

interconnection with BellSouth services and facilities, including access to UNEs, for the provision of telecommunications services.

(Tr. 733-34). BellSouth's proposed rates for collocation are cost-based, consistent with BellSouth's actual business practices, and compliant with the requirements of the 1996 Act. The Commission should approve BellSouth's proposed rates.

**Issue 30: Should BellSouth resolve all loop "facilities" issues within thirty days of receiving a complete and correct local service request from Covad?**

*** It is not reasonable to place an arbitrary, artificial time limit on when facilities issues can be resolved. Availability of facilities is affected by Outside Plant Construction workload and other factors. ***

Covad has proposed a firm 30 day time frame for resolving all loop facilities issues. However, it is not reasonable to establish a fixed, artificial timeframe for clearing facilities because the availability of facilities is affected by Outside Plant Construction workload and other factors. (Tr. 661-62). BellSouth's construction forces have an ample workload to continue to work activity for months if no further jobs are issued. Any jobs needed to resolve facilities issues are in addition to normal construction and maintenance work activity. Id. In addition, emergency situations can also impact the prioritization of Outside Plant Construction workload. As stated by BellSouth witness Kephart, "[w]ork needed to restore service after a natural disaster or a major outage caused by human error will take priority over work to provision newly demanded service. Work that could be required to relieve network congestion or sever facility shortages will also be done ahead of demands for new service." (Tr. 662-63). Indeed, for this reason, BellSouth does not have any firm deadlines or contractual or tariff commitments to resolve pending facilities with its retail customers. See. Tr. 282.

The unreasonableness of Covad's proposed language is readily apparent from Covad witness Seeger's testimony wherein he acknowledged that, in his own experience, he has been

unable to clear a pending facilities in 40 days, which is ten days greater than the period Covad is proposing. (Tr. 329). Witness Seeger also recognized that BellSouth could not meet the thirty day time frame if BellSouth were reconditioning its outside plant. (Tr. 33 1).

While BellSouth makes every attempt to relieve facility problems as quickly as possible, as recognized by Covad's own witness, it is not unusual for such jobs to require greater than one month before being completed. (Tr. 663). Accordingly, it is unreasonable to place an artificial time constraint on the completion of jobs that will relieve facility issues. The Commission should adopt BellSouth's proposed language as to this issue.

**Issue 32(a): Should Covad be required to pay amounts in dispute as well as late charges on such amounts?**

*** Covad should not have to pay portions of bills that it legitimately disputes until the dispute is resolved. Covad should, however, pay any undisputed amounts. Moreover, once the dispute is resolved, Covad should pay late charges on the disputed bill that it is finally determined that Covad owes. ***

BellSouth agrees that Covad does not have to pay portions of a bill that Covad disputes while that dispute is pending. (Tr. 109). It should, however, pay any undisputed amounts. (Tr. 532). BellSouth also agrees that Covad only has to pay late charges on disputed amounts that Covad is eventually determined to owe. Id. Not requiring Covad to pay late charges on disputed amounts that were actually owed to BellSouth simply encourages Covad and other ALECs that might opt into Covad's agreement to contest its bills in order to delay payments to BellSouth. Id.

Covad's problem with BellSouth's language appears to be when Covad does not initiate the billing dispute process in time but the dispute is eventually resolved in Covad's failure. In that case, Covad would be required to pay late charges on the disputed amount just as if Covad simply failed to pay the bill in time. (Tr. 110). Covad has presented no justification for its proposed language, other than that it may one day fail to pay late charges an amounts that would

not have been owed if it had properly and timely disputed the amount. This justification is insufficient because (1) Covad would receive the magnetic tape format of the bill, which is generally prepared and sent within two to four days after the due date, via Federal Express overnight delivery; and (2) if Covad wanted the bill sooner, it could pay for the electronic transmission of the bill. (Tr. 900, 906, 887). Moreover, Covad witness Oxman testified that Covad has disputed over $1.6 million dollars in charges through March 2001 (Tr. 47). Obviously, the current process is adequate for Covad to timely review its bills and dispute charges. Accordingly, the Commission should adopt BellSouth's proposed language.

## CONCLUSION

For the reasons set forth above, BellSouth requests that the Commission adopt BellSouth's position on each issue enumerated above.

Respectfully submitted this 19th day of July, 2001.

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