BELLSOUTH

BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

joelle.phillips@bellsouth.com

Joelle J. Phillips
Attorney

615 214 6311
Fax 615 214 7406

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EXECUTIVE SECRETARY

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May 1, 2002

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Generic Docket to Establish UNE Prices for Line Sharing per FCC 99-355 and Riser Cable and Terminating Wire as Ordered in TRA Docket No. 98-00123*
Docket No. 00-00544

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Reply Memorandum in Support of Petition for Stay. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Joelle J. Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Generic Docket to Establish UNE Prices for Line Sharing per FCC 99-355 and Riser Cable and Terminating Wire as Ordered in TRA Docket No. 98-00123*

Docket No. 00-00544

BELLSOUTH'S REPLY MEMORANDUM IN SUPPORT OF PETITION FOR STAY

BellSouth Telecommunications, Inc. ("BellSouth") submits this reply memorandum in support of its Petition for Stay. The opposition to that Petition filed by DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") offers no legitimate response to BellSouth's fundamental points. The Petition for Stay should be granted.

INTRODUCTION

The First Initial Order dated April 3, 2002 ("Initial Order") requires BellSouth to install dual-purpose line cards for the Competitive Local Exchange Carriers' ("CLECs") use in BellSouth's Next Generation Digital Loop Carrier ("NGDLC") systems. As BellSouth set forth in its Petition for Stay, as supported by the affidavit of William J. McNamara, III, BellSouth has not deployed NGDLC dual-purpose line cards in its network and, at this time, such deployment is not feasible in light of the numerous technical issues that BellSouth has discovered in its analysis of the NGDLC dual-purpose line cards. In opposing BellSouth's request for a stay, Covad offers the Authority nothing but a lobbyist's "analysis" of certain press releases and other information relating to SBC Communications, Inc.'s network. The Authority should not be persuaded by Covad's misdirection play. The issues raised by the Petition are whether BellSouth has deployed NGDLC dual-purpose line cards and whether BellSouth will be able to do so any time in the near future. Moreover, the Authority should reject Covad's untimely request for reconsideration of the Initial Order. In addition to being procedurally improper, the request is wholly without merit.

ARGUMENT

I. BellSouth's Petition for Stay Should Be Granted.

Covad offers no real response to Mr. McNamara's affidavit, other than to argue that it is not specific enough about the technical issues associated with the use of NGDLC dual-purpose line cards. Significantly, Covad apparently does not dispute that BellSouth has not deployed such cards in its network in Tennessee or elsewhere. In fact, Covad argues that "[a]lthough it may be true that BellSouth cannot begin installing NGDLC line cards *today*, it is absolutely clear based on the SBC example that it could begin doing so in the near future." Thus, even Covad apparently agrees that BellSouth cannot comply with the Authority's directive until sometime "in the near future." It therefore appears to be uncontested that a stay of the Initial Order is appropriate, with the parties only disagreeing about the duration of such a stay.

Covad's claim that "it is absolutely clear" that BellSouth could comply with the Authority's order "in the near future" is wholly unpersuasive. Covad asserts that "SBC is deploying dual purpose line cards in its NGDLC terminals right now." Opposition at p. 3. Covad's only citation of authority for that statement is a press release from SBC attached to the Opposition as Exhibit 2. Yet, nowhere in Exhibit 2 is there any statement that "SBC is deploying dual purpose line cards in its NGDLC terminals," any detail about what NGDLC systems SBC is utilizing, or what software release SBC is employing. In fact, the press release only refers to SBC's stated intention to "begin[] market trials of its neighborhood broadband gateways...."

In fact, a careful review of Covad's filing reveals that only in the affidavit of Ms. Carter, Covad's Director of External Affairs, is there any affirmative statement about SBC's deployment of dual-purpose line cards. Ms. Carter claims to have "developed an expertise on SBC's Project Pronto architecture and in the subject of line card deployment in portions of the country served by [SBC]." Her affidavit does not disclose how Ms. Carter supposedly developed this "expertise," whether she has any background in network technology deployment, or whether she has any factual basis for her conclusions beyond her review of press releases and attendance at certain "collaboratives." Although Covad also included in its filing an affidavit of Mr. Zulevic, who has more than thirty years of network experience, Mr. Zulevic's affidavit studiously avoids any comment on the technical issues related to the installation of NGDLC dual-purpose line cards.

In any event, whether SBC planned to install NGDLC dual-purpose line cards in its network (it is BellSouth's understanding that SBC did have such plans), Covad's Exhibit 2 does not support the claim that SBC is deploying such cards "right now." On its face, the press release designated as Exhibit 2 is dated August 23, 2000. The other SBC release on which Covad relies (attached to Covad's filing as Exhibit 3) is dated December 19, 2000. Neither of the press releases selected by Covad for inclusion in its filing informs the Authority of SBC's current plans for Project Pronto. A more recent article concerning SBC's plans (attached hereto as Exhibit "A") states that, as of October 23, 2001, SBC was "re-evaluating both the expenditure and the timing of the Project Pronto" which had previously been delayed. BellSouth does not know whether SBC has experienced any technical issues with the deployment.

Turning to Covad's claims about BellSouth's network, it is worth noting that Covad does not offer any substantive response to the numerous technical issues identified by BellSouth beyond its general statements that BellSouth has not proven its claims. Contrary to Covad's suggestions that BellSouth deliberately designed its network to disadvantage CLECs, the fact is that BellSouth began its placement of ADSL at remote terminals before any integrated NGDLC solutions were available. BellSouth devoted substantial time and capital to construct a network infrastructure based on a DSLAM overlay architecture. BellSouth has continually evaluated integrated NGDLC solutions but such solutions have not demonstrated any advantage over the DSLAM overlay architecture.

Nevertheless, NGDLC integration does offer some technical advantages in some circumstances. Recognizing this, BellSouth has been working with its

NGDLC suppliers to effect solutions which are viable in its network. Ultimately, Covad's assumption that BellSouth should be able to do whatever SBC is supposedly doing ignores the fact that BellSouth and SBC have made different architectural and operations choices.

For example, as Mr. McNamara explained in his affidavit, one of the issues raised by NGDLC dual-purpose line card installation is interface group renumbering. This issue was caused by the introduction of multi-hosting of remote terminals. Effective with Release 8 (Release 8.2.6 is the final, stable load), a Litespan NE can host up to four GR303 interface groups. Litespan could previously host only one group, and new group numbers were created by Alcatel to support the increase. If a GR303 group exists in an earlier release, it will be renumbered when loaded with Release 8.2.6 or later software. If interface group renumbering has not been a major problem for SBC, BellSouth must assume that SBC did not have GR303 groups working through Litespan prior to Release 8. Based on the announced timing of Project Pronto, it would be reasonable to assume that equipment deployed by SBC in connection with that project would be based on Release 10 or 11 software.

Covad belittles the issue of incompatibility between Litecraft 4.0 and the Telcordia TechNet application resident on BellSouth technicians' portable computers by suggesting that BellSouth should simply "use the specialized Alcatel software." Carter Aff. at ¶ 10. TechNet provides a standard operating environment through which BellSouth's technicians receive and close out their work orders; access customer and facility records; invoke testing; and access network elements and element managers, such as Litecraft. Because of the incompatibility, BellSouth technicians cannot do electronic cross-connects in Litespan beyond Release 10. As recently as this week, Alcatel has advised BellSouth that it is close to agreement with Telcordia on how to correct the incompatibility, but Alcatel has offered no details or schedule. If it is true, as Covad implies, that SBC has not had a similar problem, that fact can only be attributed to SBC not using the Telcordia TechNet application.

The third problem identified in Mr. McNamara's affidavit is a severe service capacity limitation resulting from the way Alcatel has chosen to assign virtual path identifiers (VPIs) to Litespan, in conjunction with the limited addressing space provided by the ATM switches that BellSouth uses. Rather than allowing an entire network element, e.g., a DSLAM or Litespan system, to share a common VPI, the Litespan architecture requires that each distribution shelf or channel bank assembly (CBA) be identified by unique VPIs. BellSouth has designed its xDSL/ATM architecture around the use of different VPIs for different classes of service. If SBC has not had this problem, one must assume that SBC utilizes a different type of ATM switch, deploys different cabinets than those used by BellSouth, and/or utilizes a different application of VPIs within its network.

As noted in Mr. McNamara's affidavit, the other NGDLC system within BellSouth's Tennessee network is Marconi Communications' DISC*S system. Ms. Carter does not profess "expertise" in that system, but nevertheless discounts Mr.

McNamara's statements. As noted by Mr. McNamara, the line card that Marconi has provided to BellSouth for evaluation has significant limitations on the number of ADSL lines that can be served from a single channel bank assembly. And, the power demand of ADSL is such that in the event of commercial power outage, it can cause lifeline battery reserve to be exhausted before restoration is feasible. Based on the Marconi web site information included in the Covad filing, it appears that Marconi is offering its initial DISC*S ADSL product to other customers who may find it acceptable. To date, Marconi has not submitted a product to BellSouth that overcomes the problems identified in Mr. McNamara's affidavit.

In sum, BellSouth has shown that the installation of NGDLC dual-purpose line cards in its NGDLC systems is not feasible at this time. Covad has offered no legitimate response to that showing. The Petition for Stay should be granted.

II. Covad's Belated Request for Reconsideration Should Be Rejected

The balance of Covad's reply is, in fact, a new request for reconsideration of the Initial Order. As set forth in BellSouth's Motion to Strike, the Authority should not even consider it because Covad failed to seek reconsideration on those issues before the statutorily-imposed time period for such requests expired. As discussed more fully in the Motion to Strike, this time period is established by statute passed by the General Assembly, and even the Authority's own procedural rules expressly state that the Authority lacks the discretion to alter such deadlines. Moreover, Covad was clearly well aware of the applicable deadline, having filed a timely motion for reconsideration of a specific issue. Covad cannot continue to seek reconsideration of additional issues through the submission of untimely, piecemeal filings.

In an abundance of caution, however, BellSouth will address the substance of Covad's new and untimely request in the event the Authority decides to consider Covad's request. This case was opened to establish cost-based rates for certain unbundled network elements ("UNEs") that had not been the subject of Authority Docket No. 97-01262. Covad is attempting to take the Authority far afield from the scope of this docket with its request for an order requiring "BellSouth to provide access to its remote DSLAMs on a UNE basis." Opposition at p. 7. Covad apparently expects the Authority to issue such an order without a hearing and without consideration of other due process issues. The Authority should summarily deny the request and refer it, as the Authority has referred other issues, to Docket No. 01-00526.

If not summarily rejected, Covad's request should be denied on the merits. Covad is requesting the Authority to unbundle BellSouth's packet data network. The FCC considered whether to unbundle the equipment necessary to provide advanced services in its UNE Remand Order. In that Order, the FCC went through an extensive analysis and determined that unbundling packet switching and other equipment used to provide advanced services, e.g., DSLAMs, was unnecessary except in limited situations. The FCC's Rule 51.319(c)(5) regarding packet switching requires that an ILEC provide unbundled packet switching only where all of the following conditions are satisfied:

(i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);

(ii) There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;

(iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined under § 51.319(b); and

(iv) The incumbent LEC has deployed packet switching capability for its own use.

In reaching its conclusion, the FCC's analysis fully recognized that the advanced services market was competitive and that forcing ILECs to unbundle equipment used to provide those services would only impede continuing competition:

> [W]e are mindful that regulatory action should not alter the successful deployment of advanced services that has occurred to date. Our decision to decline to unbundle packet switching therefore reflects our concern that we not stifle burgeoning competition in the advanced service market. We are mindful that, in such a dynamic and evolving market, regulatory restraint on our part may be the most prudent course of action in order to further the Act's goal of encouraging facilities-based investment and innovation.

Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 FCC 99-238* (rel. Nov. 5, 1999)(*"UNE Remand Order"*) at ¶316. BellSouth will continue to allow CLECs to collocate their DSLAM at the RT, and BellSouth will continue to provide the necessary UNEs for transport back to their collocation area in the central office. Accordingly, BellSouth's possible future deployment of NGDLC should have no impact on CLECs.

The Authority affirmatively adopted the FCC's analysis in the Interim Order of Arbitration Award issued in Docket No. 99-00948 (June 25, 2001). In that case, Intermedia requested that the Authority require BellSouth to unbundle packet switching functionality. The Authority reviewed the standards set forth by the FCC and concluded that BellSouth is required "to provide access to packet switching capabilities as an unbundled network element only when the limited circumstances identified in FCC Rule 51.319(c)(5)(i)-(iv) exist." Order at p. 35-36 (emph. added). Covad's request is identical to Intermedia's. In this case, there is no evidence in the record to support Covad's request for unbundled packet switching functionality. Therefore, the Authority has no basis for granting Covad's request.

Covad quotes from ¶13 of the *Line Sharing Reconsideration Order* (Line Splitting Order) that "collocation by competitive LECs at remote terminals is likely to be costly, time consuming, and often unavailable". Covad missed the point of this paragraph. The FCC goes on to clarify the intent of the order in the remainder of ¶13:

> This clarification promotes the 1996 Act's goal of rapid deployment of advanced services because it makes clear that competitive LECs have the flexibility to engage in line sharing using DSLAM facilities that they have already deployed in central offices rather than having to duplicate those facilities at remote terminals. In addition, our ruling in the

> instant Order ensures that in situations there is no room in the remote terminal for the placement of competitive LEC facilities, competitors nevertheless are able to obtain line sharing from the incumbents.

Indeed, BellSouth stands prepared to allow CLECs to collocate at remote terminals, consistent with the FCC's expectation of how CLECs are to provide end-users DSL in a DLC environment. Through the collocation process currently offered by BellSouth, a CLEC that wants to provide xDSL where DLC is deployed can collocate DSLAM equipment at BellSouth DLC remote terminal ("RT") sites. This will allow the CLEC to provide the high speed data access in the same manner as BellSouth. BellSouth will attempt in good faith to accommodate any CLEC requesting such collocation access at a BellSouth DLC RT site that contains a BellSouth DSLAM.

If sufficient space exists within a DLC RT, BellSouth will allow a CLEC to collocate its DSLAM in the RT, regardless of whether BellSouth has installed its own DSLAM at that RT. If sufficient space does not exist within the DLC RT and BellSouth has not installed its own DSLAM at that DLC RT location, then BellSouth will file a collocation waiver request with the Authority for that DLC RT site. If sufficient space does not exist within the DLC and BellSouth has installed its own DSLAM at the DLC RT location, then BellSouth will make good-faith efforts to augment the space at that DLC RT, such that the CLEC can install its own DLSAM at that DLC RT. In the very unlikely event that BellSouth could not accommodate collocation at the particular RT where BellSouth has a DSLAM, BellSouth will unbundle the BellSouth packet switched network at that RT in accordance with

FCC requirements. BellSouth, therefore, provides CLECs the same opportunity to offer DSL service where DLC is deployed as BellSouth provides itself. These policies are the same as those considered by the Authority in Docket No. 99-00948.

Covad made reference to "Last Mile" transmission facilities. Placing DSLAMs at remote terminals has nothing to do with the "last mile distribution network" as defined by the FCC. This is nothing more than an attempt by Covad to further cloud the real issues in this proceeding. The "last mile distribution network" consists of the distribution sub-loop from the RT cross-box to the loop demarcation point at an end-user customer premises. It does not include equipment at the RT. In the *UNE Remand Order*, the FCC stated at ¶ 262:

> Requesting carriers require collocation because they have not yet duplicated the incumbent LEC's loop plant to provide "last mile" connectivity to end users. Obtaining unbundled loops and connecting these loops to collocated equipment is therefore the only reasonable and economically rational manner by which requesting carriers can provide connectivity to their end users.

In his affidavit, Mr. Zulevic states, "In each of the mini-DSLAM-equipped RTs in Tennessee, BellSouth is the only DSL provider with the ability to provision DSL loops." This is patently untrue. There are numerous examples of BellSouth ADSL end-users with remotely deployed DSLAMs and Covad serving end-users through the same remote terminal with a central office-based DSLAM.

In sum, even if the Authority considers Covad's new and untimely request for reconsideration, the request should be denied. Nothing in the record of this proceeding justifies a finding that BellSouth should provide unbundled packet switching functionality to CLECs in Tennessee.

CONCLUSION

The Authority should grant BellSouth's Petition for Stay and reject Covad's untimely request for reconsideration of the Initial Order.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

Guy M. Hicks
Joelle Phillips
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

T. Michael Twomey
675 W. Peachtree Street, Suite 4300
Atlanta, Georgia 30375
(404) 335-0750

445048

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SBC to cut back DSL buildout plan

By Stephen Lawson
IDG News Service, 10/23/01

SBC Communications' project to make high-speed Internet access available to 80% of its customers by the end of 2003, will be among the programs hit by capital expenditure cutbacks announced Monday by the incumbent regional carrier.

SBC will cut capital expenditures company-wide by about 20%, the company said after reporting a drop in net income and revenue in the third quarter compared to the year-earlier quarter.

As a result of the spending cuts, the company is re-evaluating Project Pronto, announced in October 1999, to invest $6 billion in new broadband infrastructure by the end of 2002, said Fletcher Cook, a DSL spokesman at SBC subsidiary Pacific Bell, in San Francisco. The goal later was pushed back to the end of 2003. The company now is re-evaluating both the expenditure and the timing of the Project Pronto, he said.

SBC currently can offer DSL to about 23 million customers across its service areas, or about 58% of its customer base. It has just under 1.2 million DSL customers today.

SBC's move is just the latest setback for consumers and small businesses looking for more network service options. Several major dedicated DSL carriers, such as NorthPoint Communications Group and Rhythms NetConnections, have shut down or been acquired in recent months. Last week, Sprint shut down its ION (Integrated On-demand Network) service, which let consumers and small businesses use a single, high-speed network based on ATM for both voice and data communications.

A heavy regulatory burden, in addition to the sagging economy, forced SBC to cut back, Cook said. As an example of the constraints regulators have imposed on SBC, Cook pointed to a requirement imposed in the wake of SBC's 1999 acquisition of Ameritech. At that time, SBC was required to form a broadband affiliate company, Advanced Solutions, within six months, even though it normally takes about 18 months to create a new company, he said.

Meanwhile, SBC's DSL business competes against broadband offerings from cable companies that face far fewer regulatory requirements, he added.

"We're going to take a more measured approach" to building out broadband, Cook said. "Demand for DSL is significant, and we're prepared to move forward once we've obtained regulatory relief."

A lack of competition in DSL, as well as the complex regulation of the telecommunication industry, has kept DSL prices too high for many potential customers, said Norm Bogen, an analyst at Cahners In-Stat Group, in Scottsdale, Arizona. One drag on competition historically has been competitive carriers' difficulty in getting access to the "last mile" of phone lines to customer locations, which is owned mostly by incumbent carriers such as SBC, he added.

SBC's net income in the third quarter ended Sept. 30 fell nearly 31% to about $2.1 billion from about $3 billion a year earlier, while revenue fell 15.5% to $11.3 billion from $13.4 billion. Excluding one-time items, such as asset sales, net income was up 2.1% to $2 billion from $1.96 billion and operating revenue was up 0.8% to $13.5 billion from $13.4 billion, the company said in a statement.

Diluted earnings per share were $0.61, down nearly 31% from $0.88. Excluding the one-time items, diluted earnings per share rose 3.5% to $0.59 from $0.57.

The IDG News Service is a Network World affiliate.

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand [ ] Mail [X] Facsimile [ ] Overnight [ ] Electronic	Jon E. Hastings, Esquire Boult, Cummings, et al. P. O. Box 198062 Nashville, TN 37219-8062
[ ] Hand [ ] Mail [X] Facsimile [ ] Overnight [ ] Electronic	James Wright, Esq. United Telephone - Southeast 14111 Capitol Blvd. Wake Forest, NC 27587
[ ] Hand [ ] Mail [X] Facsimile [ ] Overnight [ ] Electronic	Charles B. Welch, Esquire Farris, Mathews, et al. 618 Church Street, #300 Nashville, TN 37219
[ ] Hand [ ] Mail [X] Facsimile [ ] Overnight [ ] Electronic	James Lamoureux, Esquire AT&T 1200 Peachtree St., NE Atlanta, GA 30309
[ ] Hand [ ] Mail [X] Facsimile [ ] Overnight [ ] Electronic	R. Dale Grimes, Esquire Bass, Berry & Sims 315 Deaderick Street, #2700 Nashville, TN 37238-3001
[ ] Hand [ ] Mail [X] Facsimile [ ] Overnight [ ] Electronic	Henry Walker, Esquire Boult, Cummings, et al. 414 Union Ave., #1600 P. O. Box 198062 Nashville, TN 39219-8062

162185

[ ] Hand [ ] Mail [X] Facsimile [ ] Overnight [ ] Electronic	Joshua M. Bobeck, Esquire Swidler Berlin, et al. 3000 K St., NW, #300 Washington, DC 20007-5116
[ ] Hand [ ] Mail [X] Facsimile [ ] Overnight [ ] Electronic	William H. Weber, Esquire Covad Communications 1200 Peachtree St., NE, 19th Fl. Atlanta, GA 30309