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July 20, 2001

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

In Re: *Petition for Interconnection Arbitration by DIECA Communications, Inc. d/b/a Covad Communications Company, Inc. Against BellSouth Telecommunications, Inc.*
Docket No. 00-01130

Dear David:

Please find enclosed the original and thirteen copies of the Direct Testimony of Jason D. Oxman, Thomas E. Allen, William Seeger and Mike Zulevic filed on behalf of Covad Communications, Inc. in the above-captioned docket as directed by the Tennessee Regulatory Authority.

Copies have been sent to parties.

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry Walker
Henry Walker

HW/nl
Attachment

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE: Petition for Arbitration of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Certain Terms and Conditions Of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996	)	Docket No. 00-01130

DIRECT TESTIMONY OF JASON D. OXMAN

ON BEHALF OF

COVAD COMMUNICATIONS COMPANY

JULY 20, 2001

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Counsel for DIECA Communications, Inc. d/b/a Covad Communications Company

Q. Please state your name, position and job duties.

A. My name is Jason D. Oxman, Senior Counsel of Covad Communications Company ("Covad"). I am based in Washington, D.C. I have held this position since September of 1999. In this position, I direct Covad's advocacy before federal regulatory agencies. I also advocate Covad's regulatory and policy issues before state public service and utility commissions ("PUCs") and Congress. In addition, I have frequent interactions with incumbent local exchange carriers ("ILECs") in order to negotiate interconnection and other agreements.

Q. Please state your qualifications and experience prior to joining Covad.

A. Immediately prior to joining Covad, I spent over two years at the Federal Communications Commission, in two different capacities. I started at the Commission in September 1997 as a staff attorney in the Common Carrier Bureau. In that capacity, I had primary responsibility for several aspects of the long distance applications of BellSouth for Louisiana and South Carolina, both of which the FCC rejected. I also played a critical role in several of the rulemaking proceedings that the Commission undertook as part of its Advanced Services dockets, including the Commission's so-called Cageless Collocation order. In November 1999, I was named Counsel for Advanced Communications in the Office of Plans and Policy at the Commission. In that capacity, I advised the Commission on broadband-related legal and technical issues, including a broad range of local competition issues.

I served as a law clerk to the Maine Supreme Judicial Court from 1996 to 1997. I hold a Masters of Science in Mass Communications and a Juris Doctor from Boston University. I hold a B.A. *cum laude* from Amherst College.

Q. What is the purpose of your testimony?

A. My testimony will cover the following issues set forth in Covad's Petition for Arbitration:

- Issue 1: Should BellSouth be permitted to require Covad to waive liability for breaches of the Agreement?
- Issue 33(a): Should Covad be obligated to pay an amount in dispute, and if Covad does not pay, should BellSouth be permitted to assess late payment charges for that amount?

I understand that other Covad witnesses will be addressing the other issues presented in Covad's Petition.

The Nature of an "Interconnection Agreement"

Q. How do the issues listed above relate to BellSouth's provision of unbundled network elements ("UNEs") and interconnection to Covad pursuant to Sections 251 and 252?

A. When Congress passed the 1996 Act, it deliberately chose the "interconnection agreement" as the means by which requesting carriers like Covad are to obtain enforceable rights to UNEs and interconnection from ILECs like BellSouth. Prior to passage of the 1996 Act, several state commissions, including New York and Michigan, had been implementing similar unbundling provisions by requiring ILECs to file tariffs with the state commission pursuant to the authority provided

by the state communications law. Rather than require all ILECs to file interconnection and unbundling tariffs, Congress took a different approach and instead devised a scheme that required the ILECs to enter into binding contracts with CLECs – the "interconnection agreement" – for the rates, terms and conditions of interconnection and unbundling.

Q. Why does the difference between a tariff and a contract matter?

A. The difference lies in the means and ability to enforce the substantive provisions of those legal obligations. When an ILEC like BellSouth files an intrastate tariff before a state commission, the state commission's obligations and rights to review that tariff may be (and often are) limited by state law. In addition, the right of a purchaser of services under that tariff to dispute the rates, terms and conditions of that tariff may be limited. In addition, a state commission may not have the authority or may only have limited authority to adjudicate a dispute between the ILEC and the purchaser. And since the processes and powers vary between state commissions across the nation, relying solely on these processes and powers would dramatically slow the development of competition nationwide.

By requiring that ILECs enter into binding contracts, Congress opened the door for a panoply of standard dispute resolution procedures for enforcing these contracts, including litigation before the courts. One of Covad's most difficult challenges has been to obtain interconnection agreements with ILECs that will provide Covad sufficient and enforceable legal rights to obtain the UNEs and collocation that we need to execute our business. Pursuant to Sections 251 and 252 of the 1996 Act, all of the terms of these contracts are subject to arbitration

before a state public commission, such as the Tennessee Regulatory Authority. If a state commission chooses to arbitrate those disputes pursuant to Section 252 of the 1996 Act, a state commission has the authority and the obligation to resolve "any open issue" presented to it. *See* 47 U.S.C. 252(b)(4)(C).

Q. Why can't the Authority rely on BellSouth and Covad to negotiate the business aspects of the interconnection agreement?

A. There are two reasons why these and other issues should be arbitrated by the Authority.

First, oversight of *all* provisions of an interconnection agreement are necessary because the relationship between an ILEC and a CLEC is not a "normal" commercial relationship. The processes and policies put in place by Sections 251 and 252 are designed to overcome the fundamental disparity in bargaining power between an ILEC and a CLEC like Covad. Under "normal" commercial situations, contracts are entered into by parties because both parties perceive a mutual, beneficial gain from entering into the transaction. For example, I only buy a car when I decide that the value I receive from the car is greater than the cost of the car. On the other hand, the dealer will only sell me a car if the price I am willing to pay for the car is sufficient to cover its overhead, costs, and expected profit. The "haggling" process between me and a car dealer (while sometimes unpleasant and unsavory) is a means in which the dealer and I determine and decide whether both parties will gain from completing the sale. Of course, this negotiation process occurs in the context of a competitive market – I am free to walk out of the dealership and buy the same or similar car from a

different dealer, and the dealer may have other buyers that will pay more for the vehicle. Both the dealer and I know that the other party has an alternative to a negotiated agreement, and this competitive situation by itself generally provides sufficient incentive to close the negotiations swiftly and efficiently. In the context of a car sale, the role of regulation or legal intervention is generally limited to fraud, "lemon laws", defective materials, and the like – and not the sale price of the car.

"Negotiations" between a CLEC and an ILEC over interconnection *do not* occur in a competitive environment. ILECs like BellSouth possess a dominant market position over local facilities, and requesting carriers like Covad need to access those facilities in order to go into business in competition with BellSouth. As a result, the cooperation of an ILEC (however begrudging) is absolutely necessary for local competition to develop. The lack of competition in local markets significantly affects both parties' approaches to the interconnection "negotiation."

In the car sale example, I always had the option of choosing a different dealer or different car. However, if Covad wants to offer DSL services in BellSouth service territories, it has no choice but to reach an "agreement" with BellSouth. The best alternative Covad has to a negotiated agreement is not being in business in those geographic areas.

From BellSouth's perspective, it has a dominant market position and knows that requesting carriers like Covad must reach an "agreement" with it before those providers can begin to compete with BellSouth. It is an economic

fact that possessing a monopoly is more profitable to a company like BellSouth than entering an agreement that will facilitate the development of a competitive market. As a result, BellSouth essentially has "nothing to gain and everything to lose" by cooperating in interconnection negotiations.

Congress recognized this disparate bargaining power and decided that there must be regulatory oversight over the rates, terms and conditions of interconnection agreements between ILECs and CLECs. Congress knew that leaving the interconnection process to private "negotiations" only would be insufficient to ensure that competition develop in local markets rapidly. As a result, Sections 251 and 252 provide a framework in which the FCC establishes unbundling and interconnection rules and in which state commissions are to resolve and adjudicate "any open issue" in an interconnection agreement that is not resolved by the parties. ILECs and CLECs are required by law to negotiate all aspects of the agreement in "good faith" and failure to do so is subject to regulatory penalty. *In the matter of BellSouth Corporation*, File No. EB-00-IH-0134, Order and Consent Decree, FCC 00-389 (rel. Nov. 2, 2000). Recognizing the importance of swift resolution, Congress provided carriers access to a state commission interconnection agreement arbitration process that is to meet certain deadlines and procedures.

It is important to note that the disparity in bargaining power permeates *every clause* of the interconnection agreement – not simply the clauses related to UNE rates or OSS methods and procedures. Because interconnection agreements are enforceable contracts, certain clauses, including a broad limitation of liability

clause, can significantly undermine legal rights that may be present in another section of the contract. Also, BellSouth's refusal to even consider or discuss Covad's suggestion about how to manage a potential strike means that absent regulatory intervention, Covad has no adequate assurance that it will be treated in a nondiscriminatory manner, as required by law. Finally, the failure of the contract to ensure that timely and accurate bills are presented to Covad just as much impairs Covad's ability to do business in Tennessee as does failure to provide a loop on a timely basis.

Q. What is the other reason these issues should be arbitrated?

A. If the Authority chooses to arbitrate pursuant to Sections 251 and 252, it must "resolve" "any open issue" presented to it. Sections 252(b)(1), 252(b)(4)(C). A refusal to resolve an open issue by the statutory deadline provided for in Section 252 could be interpreted as a "failure to act" and could lead to the submission of the entire arbitration to the FCC pursuant to Section 252.

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

Q. What is the limitation of liability language proposed by BellSouth in its negotiations with Covad?

A. The BellSouth's original proposal states:

8.4 Limitation of Liability.

8.4.1 Each Party's liability to the other for any loss, cost, claim, injury or liability or expense, including reasonable attorney's fees relating to or arising out of any negligent act or omission in its performance of this Agreement whether in contract or in tort, shall be limited to a credit for the

actual cost of the services or functions not performed or improperly performed.

Q. Did this proposal change?

A. As these arbitration's progressed BellSouth proposed that Covad adopt language included in the MCI contract. Specifically, that proposal says:

> With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by Covad, any Covad customer or by any other person or entity, for damages associated with any of the services provided by BellSouth pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Section, BellSouth's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by Covad , and Covad customer or any other person or entity shall not be subject to such limitation of liability when such claims result from the 1) gross negligence or willful misconduct (including intentional torts) of BellSouth; or 2) BellSouth's refusal to comply with the terms of this Agreement, provided that BellSouth's actions or inactions based upon a reasonable and good-faith interpretation of the terms of this Agreement shall not be deemed a refusal to comply. In addition, nothing in this section shall be interpreted to limit the remedies, if any, provided for in Attachment XX of this Agreement.

Q. What has Covad proposed?

A. Covad proposes that the parties **retain** the limitation of liability provision from their existing Interconnection Agreement, which has been approved by this Authority. It states:

7.1 Liability Cap.

7.1.1 With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by DIECA, any DIECA customer or by any other person or entity, for damages associated with any of the services provided by BellSouth pursuant to or in connection with this Agreement, including but not limited to the installation, provision, preemption,

termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Section, BellSouth's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Agreement for the period during which the service was affected. **Notwithstanding the foregoing, claims for damages from the gross negligence or willful misconduct of BellSouth and claims for damages by DIECA resulting from the failure of BellSouth to honor in one or more material respects any one or more of the material provisions of this Agreement shall not be subject to such limitation of liability.**

Q. From Covad's perspective, what are the key elements of this provision?

A. There are two. First, it is important that BellSouth's liability not be capped in instances of gross negligence or willful misconduct. Second, it is important BellSouth retain liability for material breaches of the contract.

Q. Why isn't the new BellSouth language acceptable?

A. It addresses the gross negligence and willful misconduct, but it throw into the mix confusing and disruptive concepts like "good faith" "refusal to comply" and "reasonable interpretation." If MCI and BellSouth were able to agree to this language, they are certainly entitled to do so. Covad does not accept it. Moreover, BellSouth's new proposal still seeks to effectively place a cap on the liability as a result of material breaches of the contract. It is not clear to Covad what BellSouth means by "refuses to comply with the contract." Covad prefers the language in its existing Interconnection Agreement that refers to material breaches of the contract not being subject to any liability cap. The term material breach is well established in the law and courts interpreting this clause can easily determine what, if any, actions or inactions constitute a material breach of contract. Second, Covad is not aware of any of types of contract in which liability is capped based on a party's "good faith" violation of a contract. Either the

contract is breached or it is not. If there is a breach, Covad is entitled to damages and those damages should not be limited to the cost of the element Covad was supposed to receive.

Q. Why is this important to Covad?

A. Because Covad seeks to enforce its interconnection contracts with ILECs in a variety of settings, including breach of contract litigation before the courts, limitation of liability clauses are a focus of our negotiation strategy. In 1998, Covad and BellSouth specifically negotiated the limitation of liability clause to provide that BellSouth would not be protected by a limitation of liability clause if Covad were damaged "from the gross negligence or willful misconduct of BellSouth." In addition, the clause provided that if BellSouth failed to "honor in one or more material respects any one or more of the material provisions" of the contract, no limitation of liability would apply at all. Covad has proposed that the next interconnection agreement between Covad and BellSouth contain the same clause.

Q. What has BellSouth proposed instead?

A. BellSouth has put forward a proposal that would shield it from any substantial liability from *any* breach of the interconnection agreement. In particular, BellSouth has proposed that it would *only* be liable to Covad for the "actual costs of the services or functions not performed or improperly performed." That is an entirely unacceptable limitation and would gut the other substantive provisions of the Agreement.

Q. How so?

A. As discussed above, Congress wrote Sections 251 and 252 around the principle that interconnection agreements are enforceable legal contracts. In standard commercial settings, contracts are enforced through dispute resolution or litigation settings, and in the event a contract is breached, the damaged party can recover the damages provided for in the agreement. A clause that substantially wipes out any responsibility or damages for a breach provides little, if any, incentive for a party to comply with the contract. If liability is severely limited (as in BellSouth's proposed change), the obligation to provide the contracted-for goods and services is watered down to the point that the obligation has little meaning.

Q. How would BellSouth's proposal harm the Authority's pro-competitive initiatives?

A. If BellSouth is successful in putting this clause in the Covad Agreement, even if the Authority implemented pro-competitive rules related to loop installation intervals, OSS, etc., BellSouth would not be liable to Covad for its failure to implement those policies. For example, under BellSouth's proposal, if BellSouth failed to provide a loop to Covad, Covad's "damages" would be limited to the "actual cost" of the loop it did not provide. In other words, BellSouth states that it will not bill Covad for a loop that it does not provide, and that Covad is precluded from recovering any other damages for that breach of contract.

Q. Why is Covad's proposal better for competition and consumers?

A. As stated above, Covad has only proposed to carry-forward the same clause that has governed the Agreement since 1998. Covad's proposal would provide that if

BellSouth willfully breached the contract or engaged in gross negligence in implementing the contract, no limitation would apply. In addition, material breaches of the contract would not be subject to limited liability. The public interest is served by the development of competition in local markets – a development that requires the cooperation of the dominant carrier like BellSouth. Congress has chosen that this cooperation be implemented and enforced through enforceable interconnection agreements. It is axiomatic that if a legal right cannot be enforced, it is as if the legal right does not exist in the first place. BellSouth's proposal would severely restrict Covad's ability to sue for and recover its actual, compensatory, consequential and punitive damages from breaches of the Agreement before a federal court, state court, the Authority, the FCC, or other appropriate authority. As a result, if BellSouth habitually fails to provide loops to Covad, under BellSouth's proposal, Covad would only be able to receive a credit for the charges for those non-delivered loops -- even if those failures put Covad out of business. BellSouth seeks to eschew itself of responsibility for this behavior -- even if the behavior was intentional.

Q. Can the Authority determine that Covad's clause should be in the Agreement?

A. Yes. As discussed above, the Authority has the legal authority and obligation under Sections 251 and 252 to arbitrate this clause. In addition, Covad believes that BellSouth has waived any argument it may have about the arbitratibility of this clause. The record reflects that *BellSouth*, not Covad, is the party that wants

to change this provision in the Agreement. As a result, it is *BellSouth*, not Covad that has sought that Covad agree to this clause – not the other way around.

Q. In the Florida arbitration, BellSouth stated that limitations of liability issues are not proper for resolution by the Commissions because Section 251 of the Act does not address liability issues specifically. Do you agree with that statement?

A. No. Section 251 of the 1996 Act is literally only a few sentences long. The typical Covad interconnection agreement with an incumbent LEC is hundreds of pages long. Clearly, Section 251 does not spell out in detail each and every obligation of the contracting parties. Rather, the 1996 Act sets out in minimal detail the obligations of those carriers, and issues that do not reach resolution voluntarily are to be resolved, pursuant to Section 252 of the 1996 Act, by the relevant state commission. For example, Section 251(c)(3) of the 1996 Act imposes a requirement on ILECs to provide unbundled network elements. It makes no mention of loops. If BellSouth were correct that an issue must be specifically mentioned in the language of the 1996 Act to be subject to Commission arbitration, Covad would not be able to bring any loop issues for arbitration. This is why the courts have found Section 252(e) of the 1996 Act to require state commissions to "resolve" "any open issue" that the Commission chooses to arbitrate pursuant to Sections 251 and 252. Sections 252(b)(1), 252(b)(4)(C).

Issue 3: Should there be a limitation on a CLEC's right to opt-in to an existing interconnection agreement that has only six months remaining before it expires?

This issue has been resolved by the parties.

Issue 32: Should BellSouth send Covad both a paper and a duplicate electronic bill and in either instance, when should the bill be due?

This issue has been resolved by the parites.

Q Why does reviewing the bills take so long?

A. As discussed above, paper bills for loops, transport and collocation can fill boxes. Aside from the sheer administrative expense and impossibility of processing a paper record like this in only eight business days, in the past, Covad has encountered significant problems with BellSouth's bills.

Indeed, since September 1999, Covad has encountered several significant problems with the bills proffered by BellSouth. For example, for loop and transport circuits, through March 2001, Covad has identified over $1.6 million worth of BellSouth overcharges. These instances of over billing include mistakes or errors for circuit charges, canceled circuits, disconnected circuits, mileage errors, service data errors, improper application of tax exemption, and USOC logic set errors. Detecting these problems and raising the dispute with BellSouth to hopefully resolve that problem takes time and effort. In addition, Covad believes that BellSouth's current billing dispute proposal (Issue 32) would essentially put the onus on Covad to pay the entire amount of a bill while such an issue is in dispute. Covad strongly believes that BellSouth's proposals would

have a significant anticompetitive impact: indeed, BellSouth would have a tremendous incentive to produce incorrect paper bills, demand immediate payment from the CLEC, and delay resolution of that dispute.

Issue 33(a): Should Covad be required to pay amounts in dispute as well as late charges on such amounts?

Q. Has Covad encountered billing problems with BellSouth in the past?

A. Yes, very significant ones. As discussed above, Covad has encountered several significant billing problems with BellSouth. Through March 2001, Covad has identified over $1.6 million worth of overcharges. BellSouth mistakes include errors for circuit charges, canceled circuits, disconnected circuits, mileage errors, service data errors, improper application of tax exemption, and USOC logic set errors. In fact, the size, extent and pervasive nature of these billing discrepancies reveal significant problems with BellSouth's billing systems for UNEs and collocation. While Covad cannot speak for other carriers, I anticipate that other CLECs are facing similar substantial billing disputes. We need adequate time to review bills, itemize challenges appropriately and we should be compensated if BellSouth erroneously charges us and we pay the bill, just like BellSouth is compensated for late payment fees.

Q Why does reviewing the bills take so long?

A. Paper bills for loops, transport and collocation can fill boxes. Aside from the sheer administrative expense and impossibility of processing a paper record like this in only eight business days, in the past, Covad has encountered significant problems with BellSouth's bills.

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Q. If Covad believes a bill is incorrect, what should the process be?

A. If BellSouth has overcharged Covad, Covad should not have to pay the amount of the overcharges while the dispute is resolved. In addition, late payment charges should not be assessed on an amount withheld in dispute. Covad should also not be subject to suspension or termination of service for "nonpayment" if the nonpayment is due to a legitimate billing dispute (Section 3.2). Only if it turns out that Covad has incorrectly withheld an amount should late payment fees be considered. Billing discrepancies can run into the hundreds of thousands and even millions of dollars. Covad has proposed the following language:

As set forth in Sections 1.7.1 and 1.7.2 above, BellSouth reserves the right upon thirty (30) days written notice to Covad to suspend or terminate service for nonpayment of undisputed amounts or amounts that were the subject of a Bona Fide Dispute, which has been resolved in BellSouth's favor under Section 3.3.1, or in the event of a prohibited, unlawful or improper use of the facilities or service, abuse of the facilities, or any other violation or noncompliance by Covad of the rules and regulations of BellSouth's Tariffs. For purposes of this Attachment 7, Bona Fide Dispute means a dispute of a specific amount of money actually billed by BellSouth. A Bone Fide Dispute may also mean that Covad has raised issues with BellSouth about systemic irregularities and inaccuracies on Covad bills. When such systemic problems are identified, BellSouth shall be obligated to review its bills thorough and produce to Covad a revised bills that is free from the systemic errors identified by Covad in writing. Covad shall not be obligated to pay billed items subject to a Bone Fide Dispute. Covad will provide documentation in support of a Bona Fide Dispute within 30 days of notifying BellSouth that a Bona Fide Dispute exists on a bill. Claims by Covad for damages of any kind will not be considered a Bona Fide Dispute for purposes of this Section 3.2. Once the Bona Fide Dispute is processed in accordance with Section 3.3.1, Covad will make immediate payment on any of the disputed amount owed to BellSouth or BellSouth shall have the right to pursue normal collection procedures, including termination or suspension for nonpayment pursuant to Section 1.8 hereof; provided however, BellSouth may not exercise such termination, suspension or other collection procedures (nor refuse to accept new applications or to process pending service orders) during the pendency of the Bona Fide Dispute. Any credits due to Covad, including 1.5% monthly interest on any amounts improperly paid to BellSouth and which are the subject of a Bona Fide Dispute, will be applied to Covad's account by BellSouth immediately upon resolution of the dispute. The Bona Fide Dispute provisions are in addition to (and not in lieu of) any remedies available to either party in connection with the dispute and either Party may seek relief from pursuant to the Dispute Resolution provision of this Agreement.

Q. How would BellSouth's proposal adversely impact competition in Tennessee?

A. Again, it is important to understand the fundamental disparity in bargaining power between an ILEC like BellSouth and a CLEC like Covad. For Covad to keep its business up and running in Tennessee, BellSouth must continue to provide loops, collocation, transport, and OSS to Covad. While BellSouth is certainly entitled to

payment for the elements and services it actually provides, it is only entitled to payment of the actual, approved or agreed-to rate for those elements and services. BellSouth should not be permitted to threaten to cut off Covad's access to loops and elements because Covad refuses to pay an incorrect bill.

Q. Hasn't BellSouth agreed that Covad should not pay amounts that are the subject of a Bone Fide Dispute?

A. Yes. But BellSouth's idea of what constitutes a Bone Fide Dispute is extreme. Under BellSouth's proposal, to dispute a bill, Covad would have to file a specific dispute form. On the form, Covad would have to itemize the disputes against specific charges. BellSouth would also require Covad to use what's called a Q account number. Moreover, BellSouth would require that Covad be specific on each and every disputed item and to provide written documentation at the time of filing the dispute. If we fail any one of these requirements, then it is not considered a Bone Fide Dispute. If a dispute is not considered Bone Fide, then Covad is subject to collection activity, late penalties and termination of service.[1]

On the other hand, if Covad is rushed to pay its bills and does not want to be subject to any late fees for failure to adequately document a dispute, Covad will pay the amounts charged by BellSouth. If BellSouth and Covad later determine that BellSouth erroneously charged, and Covad erroneously paid, an amount billed, BellSouth proposes that it should not be obligated to pay Covad interest on the money wrongfully charged and held. The evidence showed that exact event

[1] Tr. 633; Ex. 20.

took place. BellSouth billed Covad over $263,000 erroneously and Covad paid that amount. After reviewing the bills, Covad disputed the amount. But Covad received no compensation for the months, and in some cases, almost a year during which BellSouth profited from wrongfully assessed bills.

Q. How does Covad's proposal address this?

A. Covad's proposal is more reasonable. Covad will provide specific documentation in support of a Bone Fide Dispute where it is available. However, when Covad finds significant and systemic billing errors, Covad is not obligated to itemize each of those. Additionally, BellSouth is entitled to charge interest on late payments. That same amount of interest will be paid to Covad for any billed amounts BellSouth collects wrongfully from Covad. Interest will be paid for the duration of the time BellSouth wrongfully held Covad's money.

These improvements to the billing dispute section of the contract insure that BellSouth's bills are paid, when proper. But, it also recognizes Covad's legitimate interest in challenging systemic billing issues without the onerous itemization of those disputes. Secondly, Covad's proposed language achieves parity between late payment penalties BellSouth seeks and interest due to Covad when BellSouth erroneously bills, collects and holds Covad's money. The Commission should require BellSouth to accept these improvements to the billing dispute language.

Q. Are BellSouth's billing proposals discriminatory?

A. Access to billing systems are explicitly part of the OSS unbundled network element mandated by the FCC. As a result, BellSouth must provide "nondiscriminatory" access to billing. If BellSouth believes that its billing practices are nondiscriminatory, it must stand ready to prove that it treats its retail customers (either residential or high-volume businesses, or both) in the same manner – that is, allowing only eight to ten business days to review a voluminous paper bill and assessment of late payment charges even on matters in dispute.

Q. Does this conclude your testimony?

A. Yes.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE: Petition for Arbitration of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Certain Terms and Conditions Of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996	)	Docket No. 00-01130

DIRECT TESTIMONY OF THOMAS E. ALLEN

COVAD COMMUNICATIONS COMPANY

JULY 20, 2001

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Communications Company

Q. What is your name and for whom are you employed?

A. My name is Tom Allen, and I am employed as Vice President of ILEC Relations for Covad Communications Company ("Covad"). My business address is 10 Glenlake Parkway, Suite 130 Atlanta, GA 30328.

Q. What are your responsibilities as Vice President of ILEC Relations?

A. As Vice President of ILEC Relations and External Affairs, I have responsibility for regulatory and ILEC management for the BellSouth, Qwest, and Sprint regions.

Q. What is the purpose of your testimony?

A. I want to provide the Authority with a general understanding of the reasonable terms and conditions Covad has proposed in negotiations for its Interconnection Agreement with BellSouth. Specifically, I will be addressing issues 5(a), 5(b), 5(c), 6, 7(a), 7(b), 8, 11, 12, 19, 21, 22, and 31. In addition to myself, Covad is filing direct testimony of four other witnesses. Jason Oxman will address Issues 1, 33(b). The panel of William Seeger and Mike Zulevic will address Issues 5(a), 5(b), 5(c), 7(a), 8, 16, 18, 23, 25, 26, and 31.

Furthermore, the parties have continued to work thorough out this process to settle issues. The following issues have been resolved and will not need to be litigated in this docket: 2, 3, 4, 9, 13, 14, 15, 17, 20, 24, 27, 28, 29, 30, 32, 33(b), 34, 35 and 36. Additionally, BellSouth and Covad agreed that issues 10(a), 10(b), and 24 have either been addressed in other proceedings or will be

addressed in other proceedings. Thus, those issues will not be litigated in this arbitration.

As the Vice President of ILEC Relations, I spend a great deal of time in my job ensuring that Covad's sole supplier, BellSouth, is able to meet its commitments under the Interconnection Agreement. Covad needs an Interconnection Agreement with reasonable terms that allow Covad to successfully develop its business plan. Therefore, these key unresolved issues must be addressed and incorporated into an Interconnection Agreement between Covad and BellSouth.

Q. Briefly describe your professional and educational background?

A. I graduated from Emory University in 1976 with a BA in Political Science. I then attended the University of Georgia where I graduated with a Master's Degree in Public Administration, majoring in Public Finance in 1978. I began my career with Southern Bell in the Residence Installation and Maintenance Department as an Installation Foreman in Augusta, Georgia. My next assignment was as Dispatch Supervisor for the Augusta District. Later, I went into Covad's Customer Service group where I worked as a Business Office Manager and in various positions in the Billing and Collection group in the Customer Services-headquarters organization and the Rates and Tariff - Regulatory group at Southern Bell headquarters. By 1990, this group was incorporated into the BellSouth Regulatory Policy and Planning organization. I was a part of this group where I worked on Local Competition planning until I left BellSouth in October of 1995.

After leaving BellSouth, I joined Intermedia Communications as

Divisional Vice President- Regulatory and External Affairs with all regulatory responsibilities. In this role, I was also the lead negotiator of Interconnection Agreements. In July 1997, I joined ICG Communications as Vice President of Regulatory and External Affairs. Finally, I joined Covad in September 1999 as Vice President of ILEC Relations and External Affairs with responsibility for the regulatory and ILEC management in the BellSouth, Qwest, and Sprint territories.

Q. Describe Covad's general business plan.

A. Covad is a competitive local exchange carrier that provides high-speed Internet and network access utilizing digital subscriber line ("DSL") technology. Covad offers DSL services through Internet service providers ("ISPs") to small and medium sized businesses, home users, and directly to companies who use DSL to enable their employees to connect with their businesses' internal computer networks ("Local Area Networks") from their homes. Covad currently provides its services across the United States in 81 of the top metropolitan statistical areas ("MSAs"), including in the Nashville and Memphis areas. .

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

Q. What does Covad propose as the appropriate loop delivery intervals?

A. For issues 5(a), 5(b), 5(c), there are really two subparts to the issues: (1) What should the loop delivery interval be? and(2) Is Covad entitled to have that interval placed in its Interconnection Agreement. Covad proposes reasonable intervals and believes they are material terms of the relationship between Covad and

BellSouth. Thus, they should be included in the Interconnection Agreement.

BellSouth offers several different types of unbundled loops, including voice-grade, ADSL, HDSL and Unbundled Copper Loops (UCLs). Covad proposes a uniform and firm loop installation interval of three (3) business days for these types of loops. The work required to provision a DSL loop is simple and routine. DSL loops are nothing but voice grade copper loops, and, therefore, provisioning intervals should reflect that fact.[1] BellSouth also offers, and Covad requires, "IDSL-Compatible Loops." The installation interval for IDSL-Compatible loops is addressed in Issue 5 (b).

Q. Why is it important that the Authority establish firm loop intervals?

A. A firm and predictable loop delivery interval is critical to Covad's success in delivering competitive DSL service in Tennessee. BellSouth proposes that it be given a "targeted" 5-7 business days to provision a loop, counting from the time the Firm Order Confirmation ("FOC") date is returned to Covad. To Covad's customers, that means that BellSouth would have its "targeted" 2 business days to return the FOC and a "targeted" 5 business days to deliver the loop. Because BellSouth does not propose a firm interval for the Service Inquiry ("SI"), the SI process has the effect of "tolling" the 5 business day target interval -- only when the SI process is completed does the 5 business day target interval resume. Since no interval is established for the SI process, BellSouth in effect is able to grant

[1] BellSouth also offers, and Covad requires, "IDSL-Compatible Loops." The installation interval for IDSL-Compatible loops is addressed in Issue 5(b).

itself an unspecified time to install.

BellSouth steadfastly refuses to negotiate a shorter loop delivery interval. BellSouth will only commit to targets to provision a DSL loop, in addition to whatever time is necessary to perform a Service Inquiry before the clock even starts on the loop provisioning interval.

Q. What does BellSouth propose for loop delivery intervals for voice-grade, ADSL, HDSL, and UCL unbundled loops?

A. BellSouth states that the intervals for ADSL, HDSL, and UCL unbundled loops should be up to a "targeted" seven business days: 2 days to get the FOC and 5 days to provision the loop. In the Performance Measures dockets around the region, BellSouth advocates an extended loop delivery interval of 7 business days after the FOC, which is also longer than the interval set forth in the Product and Services Guide.

Moreover, as I have stated, Covad proposes a uniform and firm loop installation interval of three (3) business days for these types of loops. The work required to provision a DSL loop is simple and routine. DSL loops are nothing but voice grade copper loops, and, therefore, provisioning intervals should reflect that fact. BellSouth is likely to argue that SL1 voice loops are non-designed, but then fails to justify what steps, if any, are taken by BellSouth in the provisioning of the loop that take additional time. Without that evidence, BellSouth offers no support for its loop delivery interval. BellSouth cannot continue to be allowed to

have inflated provisioning intervals that disadvantage Covad and, ultimately, Tennessee end users.

Q. Is it appropriate to only consider the loop intervals without taking into account the Firm Order Confirmation (FOC) delivery interval?

A. No. As I stated above, BellSouth's FOC interval is two (2) business days. Although BellSouth claims its FOC interval may only be one (1) business day, Covad must submit the order before 10 a.m. otherwise the interval is two (2) two business days. This is simply added to the loop delivery interval. In other ILEC regions, the FOC interval is much shorter. For example, in SBC's PacBell region, the FOC interval is six (6) hours and in the Qwest region, the FOC interval is only twenty-four (24) hours.

Q. BellSouth argued in the Florida Arbitration proceeding that the minimum six (6) to seven (7) day interval is needed to efficiently and accurately install the volume of loops being demanded by our CLEC customers. Can you please comment?

A. BellSouth asserted in Florida that monthly volume for DSL loop types has grown significantly over the past 12 months. However, I would be interested to see the number for just the first four months of this year. With several CLECs going out of business, I believe loop demand could be decreasing, so a uniform three-business day interval for these loop types should be even more attainable by BellSouth. Further, if volume is in fact increasing significantly, then BellSouth should staff accordingly to meet the needs of its wholesale customers as well as to meet its legal obligations to provide non-discriminatory treatment to Covad.

Q. Do you have any other concerns with BellSouth's proposed "target" loop delivery intervals?

A. Yes. In addition to the concerns I discussed above, BellSouth wishes to reserve the right to alter and extend loop delivery intervals unilaterally, as it did last year when it extended the loop delivery interval for the ISDN loop. Without a clear contract provision requiring BellSouth to deliver loops in a firm interval, BellSouth has no incentive to meet its "targets" or to improve. BellSouth's current loop delivery intervals deny Covad a meaningful opportunity to compete in Tennessee.

A firm loop interval -- one that cannot be altered by unilateral action by BellSouth -- will assist competitors, the Authority, and Tennessee consumers. From Covad's and the Authority's perspective, a firm and predictable loop installation interval in the contract will allow every Covad employee to refer to the Interconnection Agreement to know decisively what is required of BellSouth. A firm loop delivery interval will also enable Covad to set customer expectations and deliver service that meets or exceeds those expectations.

Q. If BellSouth provides this interval to Covad, will it also be obligated to provide it to other CLECs in Tennessee as well?

A. Possibly. Other CLECs may opt into Covad's Interconnection Agreement and become entitled to the terms Covad is able to negotiate or arbitrate. However, let me say, BellSouth uses this excuse so it can deliver poor service for all CLECs. Virtually every BellSouth witness in the Florida arbitration decried BellSouth's obligation to provide equal treatment to Covad as it does to other CLECs. Our

view is simple. We have set forth intervals that are reasonable, attainable and will enable Covad to compete in Tennessee. Those intervals should be put in our contract with BellSouth. If other CLECs opt into that contract, then BellSouth should perform for them as well. As the saying goes, a high tide raises all ships. If it is good enough for Covad, it will also help other competitors. But this Authority should not be fooled by BellSouth's attempts to lower service and lower the success rate among competitors by providing slow service, just because BellSouth is legally obligated to allow other CLECs to obtain the terms of Covad's agreement. That is simply a burden BellSouth must bear under the Telecommunications Act.

Q. But don't the volumes of orders placed for xDSL loops effect how fast BellSouth can deliver them?

A. Well, while there may be an effect, this should be a force to load issue managed by BellSouth no differently than it manages any other type of service. In fact, Covad has more than 10 times as many xDSL loop in California as it does in Tennessee. Nonetheless, PacBell's interval for delivering those loops is 5 business days. Likewise, Covad has far more xDSL orders in New York than it does in Tennessee, but Verizon's delivers the loops in 6 days.

Q. Have other state commissions ordered loop delivery intervals for xDSL loops, which are included in interconnection agreements?

A. Yes. Covad has won arbitration awards that have set specific loop delivery intervals in several states in the Verizon territory, such as New York, Pennsylvania, Maryland and Massachusetts. In those states, the standard loop

delivery interval set for all DS0 loops (this category includes all xDSL type loops) is six (6) business days from receipt of a correct LSR. This means that unlike BellSouth, the FOC interval is included in the loop delivery interval. This interval is significantly less than the previous interval of ten (10) business days that Verizon originally proposed. Further, based on the arbitration decisions, these intervals are to be clearly spelled out in the final Interconnection Agreement language between Covad and Verizon. That way, both Verizon and Covad understand the interval in which Verizon must deliver its loops to Covad and that interval may not be altered by Verizon unilaterally.

Q. Has Covad also agreed to specific language in Interconnection Agreements regarding loop delivery intervals with other ILECs?

A. Yes. Covad has reached agreement with SBC for its entire 13-state region regarding specific loop delivery intervals. Loop delivery intervals for stand-alone xDSL loops is five (5) business days with no conditioning and ten (10) business days with conditioning. The loop delivery for line sharing is three (3) business days with no conditioning and ten (10) business days with conditioning. This agreement demonstrates that carriers can agree to clearly defined loop delivery intervals that are a part of the Interconnection Agreement language.

Q. Why is it important to include intervals in the actual language of the interconnection agreement?

A. Covad employees must have a single reliable source to go for loop delivery interval information. Without this single source, Covad wastes valuable time and resources trying to determine if the ILEC is meetings its contractual obligation. It

is not acceptable to just reference an interval guide on a web site. These can, and do, change at times without input or negotiation with Covad. If the specific language on loop delivery intervals is a part of the Interconnection Agreement and BellSouth wishes to make changes, then that can be accomplished through the negotiation of amendments to the Interconnection Agreement. This affords both parties the opportunity to negotiate and discuss what changes will occur to the loop delivery intervals.

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

Q. What does Covad propose as the appropriate interval for an IDSL-compatible loop?

A. Covad proposes that in general BellSouth commit to providing IDSL-Compatible Loops within (5) five calendar days of submission of an LSR. This interval recognizes that in some, but not all, instances, BellSouth will need to place an appropriate line card in the digital loop carrier system to support this loop. Thus, Covad proposes 5 business days for this work.

In addition, installation of an xDSL loop served by certain IDLC systems often requires a "work around" to certain components of that DLC system. As a result, Covad has proposed that BellSouth undertake this work around and provide such loops within (10) ten business days.

Q. What is the problem with BellSouth's proposal for IDSL-compatible loops?

A. BellSouth has not proposed any substantive installation interval for IDSL-

Compatible Loops (called "UDC Loops" by BellSouth) and seemingly does not agree that it should provide a work-around for IDSL-Compatible Loops over an IDLC. For an installation interval, BellSouth only refers to its "Interval Guide", a document that BellSouth can unilaterally change at any moment. In addition, despite the fact that Covad has been ordering ISDN loops for IDSL service for two years, BellSouth refuses to agree to anything other than a "target" delivery interval.

BellSouth refuses to provide a work around when it has chosen to deploy a type of IDLC through which DSL cannot be provisioned. Without such a work around, large groups of customers may be prevented from obtaining the competitive advanced services they desire.

Q. In the Florida arbitration proceeding, BellSouth argued that the FCC recognized that not all ISDN loops are completely compatible with IDSL service. Is this correct?

A. No. I'm unsure what BellSouth was referencing regarding the FCC, but as the evidence in Covad's IDSL complaint against BellSouth in Georgia showed, all ISDN loops that comply with the applicable ANSI standards will support IDSL. However, BellSouth has employed certain DLC units that create ISDN loops that do not comply with the industry standards, when placed in certain time slots on the DLC unit. As a result, those non-standard loops will not support IDSL service. If BellSouth provisions loops that comply with industry standards, as it is obligated to do under the contract, then there is no problem. Thus, all BellSouth

has to do is place Covad's IDSL orders in the proper time slots, and the loop will function perfectly.

Our experience reveals that BellSouth's major problem with IDSL loops does not relate to DLC slot placement issues, but rather results from BellSouth's technicians being poorly trained on installing line cards in the DLC units. Irrespective of whether BellSouth is provisioning an IDSL or an ISDN loop, BellSouth technicians must set the options correctly on the line cards. Options are set exactly the same for both ISDN service and for IDSL service. Nonetheless, BellSouth's technicians are still having problems, which delays provisioning. BellSouth should solve this through better training, rather than by elongating the loop delivery intervals. Stretching out the intervals does not solve the problem. Shorter loop delivery intervals drive BellSouth performance. Without shorter intervals, Covad can expect little improvement in BellSouth performance.

Q. Why must the Authority set firm installation intervals for BellSouth to provide IDSL-compatible loops?

A. For the same reasons set forth above for unbundled digital loops, Covad believes that a firm installation interval for IDSL-Compatible Loops will make Covad's operations more efficient and will advance the public interest (as consumers would receive service more quickly). Most importantly, firm intervals are critical to ensuring Covad's ability to deliver satisfaction to customers. Customers demand, and should be entitled to know, when Covad can provide them with DSL service. Under BellSouth's proposal, BellSouth commits only to "targeted" intervals. Those "targets" do not hold BellSouth accountable for meeting

customer expectations. Moreover, by refusing to put the interval in Covad's contract, BellSouth reserves its ability to change the interval at any time.

Covad utilizes IDSL-Compatible loops to provide IDSL service. Covad's IDSL service is requested by end-users that are either too far from a central office to receive ADSL or SDSL service, or by end-users served by a fiber-fed DLC system. This represents a substantial portion of the consumers served by BellSouth in Tennessee that otherwise would not be able to obtain Covad's DSL service. Last year, BellSouth unilaterally extended its target loop delivery interval from 7 to 12 days, without consultation or approval of Covad. We want to prevent that from happening again.

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?

Q. What is loop de-conditioning?

A. Covad recognizes that for certain loops, de-conditioning actions need to be taken in order for that loop to support DSL services. These de-conditioning services include the removal of load coils and excessive bridge taps -- encumbrances originally on a loop put in place to support analog voice service (in the case of a load coil) or to save BellSouth engineering costs (in the case of a bridge tap). BellSouth has performed and continues to perform these de-conditioning services for its own retail data communications services, including ADSL.

Q. What interval does Covad propose for BellSouth to "de-condition" loops when requested by Covad?

A. Covad proposes that BellSouth de-condition loops within (5) five business days of Covad's order. Covad believes that these intervals are reasonable.

Q. What interval does BellSouth propose to condition a loop?

A. BellSouth proposes that the loop conditioning interval be 14 days. All BellSouth is doing by proposing such an interval is slowing the growth of competitive DSL to Tennessee consumers. Moreover, numerous other retail services require loops that are de-conditioned, such as ISDN and T-1 service. BellSouth does not make its retail customers wait these extended periods of time for a conditioned loop. Therefore, it is inappropriate to make Covad customers wait unnecessarily for the same work to be performed.

Q. Should BellSouth be conditioning loops as a part of its everyday maintenance of its outside plant?

A. Absolutely. First, loops under 18,000 feet with load coils are a remnant of the past -- antiquated outside plant that has not been brought up to engineering standards that have been in place for more than 20 years. BellSouth needs loops conditioned, just as Covad does, for a variety of retail services, including the provision of ISDN and T-1. Moreover, BellSouth has announced aggressive plans to provide DSL service to 600,000 customers by the end of 2001. (See Exhibit No. TEA -1). In that same investor's report, BellSouth notes that it has earned over $1 billion in revenue from data services. Moreover, it claims that it "continues to transform its core network from analog voice to digital data." In addition to developing remote terminal capabilities for digital service, BellSouth's statement must mean either it is in the process of or has plans to upgrade its

outside plant to remove load coils that are unnecessarily on loops and which inhibit digital services. Otherwise, BellSouth would have a very difficult time meeting its goal of 600,000 DSL customers by the end of this year. Preparing a network for digital service involves active work to remove impediments to digital service, such as load coils and excessive bridged tap.

Finally, in other dockets, BellSouth has admitted that it cannot distinguish between money it spent on conditioning and that spent for other maintenance activities. (See Exhibit No. TEA-2). This shows that BellSouth does treat conditioning as routine maintenance. As such, it should not need the extended intervals it proposes here.

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?

Q. Can you please explain why it is important that Covad should be reimbursed for any costs incurred as a direct result of rescheduling?

A. BellSouth has proposed that Covad compensate BellSouth in the event Covad cancels or changes a loop order. As a result, Covad has proposed that BellSouth compensate Covad in the event BellSouth modifies or cancels a Covad unbundled loop order, using the same rates that BellSouth would impose on Covad. All we seek is equal treatment.

In Covad's two years of operation in the BellSouth territory, BellSouth has repeatedly and unilaterally cancelled Covad unbundled loop orders -- oftentimes on the date BellSouth originally promised to provide the loop (the FOC date).

These last-minute cancellations impose considerable costs on Covad because ordering and receiving an unbundled loop is only part of the process Covad must follow in order to turn-up DSL service to a customer.

BellSouth believes that Covad should compensate BellSouth if Covad cancels or modifies a loop order -- but, at the same time, BellSouth does not agree that it should pay Covad the same rates if BellSouth cancels or modifies a Covad loop order.

Q. Why shouldn't BellSouth be entitled to recover costs when Covad changes or cancels an order?

A. In complex business relationships, parties do not generally attempt to impose penalties on every possible failure point. For example, when Covad sends a package through UPS, Covad can call UPS and change the destination of the package. It may cost UPS a small amount of administrative work, but UPS does not attempt to charge Covad for that. As business partners, UPS recognizes that Covad is a valuable customer. UPS wants Covad's business and does not seek to penalize Covad for changes or cancellations of an order.

BellSouth is different. As a monopoly provider, BellSouth recognizes Covad has no where else to buy loops. Therefore, BellSouth can unilaterally decide to impose penalties on each potential point in the provisioning process.

Q. How big a problem is this?

A. It is substantial. For May 2001, in Tennessee alone, BellSouth issued more than one FOC with a loop delivery date on 15% of Covad's orders. Greater than 13% of Covad's orders receive 3 or more delivery dates.

Q. Can you explain how receiving multiple FOCs on a single order can significantly add to Covad's internal processing time and costs?

A. Sure. When Covad receives a FOC, it contains the due date for the installation of that loop. Today, FOCs are received manually via a fax from the BellSouth Local Carrier Service Center (LCSC) or by referring to a BellSouth web-based report called the PON (Purchase Order Number) Status Report. Once received, Covad then must update its internal systems to reflect the date that BellSouth is scheduled to complete delivery of the loop. Based on the due date provided by BellSouth on the FOC, the Covad systems then trigger testing on the loop, notification to the end user, and the dispatch of a Covad installation technician for completion of the DSL service. Therefore, Covad is relying on the BellSouth due date to set up all of the downstream steps towards provisioning DSL for the end user.

If after receipt of the original FOC BellSouth changes the due date, BellSouth must issue a new FOC. The only way Covad is aware of the new FOC is by receiving the faxed FOC -- provided we receive the fax, because no one would check the PON Status Report since we already received a FOC. Assuming we did receive the new fax, we must change the Covad internal systems to reflect the new BellSouth delivery date. The new FOC can be received before, on, or after the original due date. Changes will have to be made to the scheduled testing

of the loop as well as changes of the load for the Covad technician who was to be dispatched based on the original due date. The Covad representative will have to also contact the Internet service provider ("ISP") so it can contact the end user customer to let them know of the change in the BellSouth due date. Depending on when the new FOC was received, this often causes customer frustration because they have already taken time off work to be home when the loop is delivered.

If for some reason we do not receive the new FOC via fax, the order would not be looked at again until after the original BellSouth delivery date. Covad usually finds out about these after the ISP or the end user customer contacts Covad. As you can imagine, this contact is not generally pleasant. This whole sequence of events adds to Covad's internal processing time which results in much higher provisioning costs. These costs are magnified when two, three, four or more FOCs are issued on single order.

Q. How did this issue arise in negotiations between Covad and BellSouth?

A. This issue is the direct result of BellSouth efforts to impose charges on Covad when Covad changes or modifies an order. Covad asked BellSouth to remove that proposal. When BellSouth refused, Covad argued that if BellSouth wanted to charge Covad for changing or modifying an order, then Covad should be entitled to assess a similar charge on BellSouth when BellSouth changes or modifies a Covad order. One of the most common ways this occurs is when BellSouth provides Covad with a FOC loop delivery date, and then later changes that date one or several times. In addition to the wasted time processing the original

delivery date, and arranging Covad technician's scheduling accordingly, this change in delivery date can cause huge customer dissatisfaction -- especially when BellSouth does not inform Covad until the last minute that the loop will not be delivered after all. Imagine if you had taken off work to wait for BellSouth to install your DSL line, only to find out at the end of the day that BellSouth had changed the delivery date.

Q. Has BellSouth also argued that in order for BellSouth to guarantee that the requested due date will not be missed, then the rates that Covad pays for the services would have to be increased to reflect BellSouth's additional costs?

A. We are not asking for BellSouth to change its process or even to guarantee loop delivery dates. But BellSouth must recognize that Covad incurs costs when BellSouth changes an order. We should be compensated when that happens. Furthermore, to a large extent, BellSouth's ability to deliver and meet FOC delivery dates results from BellSouth's own record keeping. When BellSouth's records are accurate, BellSouth should be able to look at those records, issue a FOC delivery date to Covad, and meet that date. If BellSouth fails to keep its records updated or otherwise fails to perform sufficient, routine maintenance on its outside plant, then BellSouth may encounter problems with meeting its delivery date. Nonetheless, BellSouth should bear the costs of its failures to maintain accurate records, not Covad.

Q. Do other ILECs verify facilities before providing due dates via a FOC?

A. Yes. Qwest does a check for facilities before providing a due date on the FOC at no "extra" cost to Covad. In fact, Qwest has a thirteen step process for checking

the availability of facilities prior to issuing a FOC. Covad experiences facility problems in the Qwest region, just like it does in the BellSouth region. The difference is that Qwest gives us information about potential problems before it sets a loop delivery date, and starts Covad's order processing and operations dispatch processes. That way, Covad can make informed decisions about how to proceed with orders and most importantly, Covad can accurately advise its customers about potential problems. From a customer satisfaction standpoint, we've found Qwest's process to be superior to BellSouth's. In the Qwest territory, Covad can be much more confident about informing its customers when service will be delivered. BellSouth apparently wants Covad's Tennessee customers to wait quietly until BellSouth decides it will deliver the ordered facilities. BellSouth does not impose such uncertainty on its own retail customers and should not do so to Covad's.

Q. Does BellSouth unilaterally cancel Covad orders?

A. No. I have discovered through discussions with Covad's Tennessee field operations managers and technicians that BellSouth does in fact unilaterally cancel Covad orders. BellSouth systematically cancels the following type of orders: (1) orders requiring conditioning (Thus, the burden is placed on Covad to issue another SI-LSR for a loop with conditioning.); (2) orders with missed installation appointments, including those appointments missed for reasons attributable solely to BellSouth (Thus, Covad must resubmit the order each time within 5 days, even if it was a BellSouth-caused missed appointment.); and (3) orders for loops that have buried load coils, require a new remote terminal, new

pedestal or where a long-term facility issue cannot be cleared within thirty (30) days.

These occurrences exemplify the lack of customer service exhibited by BellSouth. I cannot think of another vendor that cancels customer orders, rather than trying to work them. From my perspective, this shows that BellSouth does not really want Covad's orders and certainly will make no significant efforts to ensure that Covad's orders are successfully filled by BellSouth.

Q. BellSouth is likely to argue that Covad should rely on filing complaints with the Authority or look to the Performance Measurements to resolve the issue of missed commitments. Do you agree?

A. No. Covad understands that the Authority has a complaint process. Covad is simply asking that this Authority require contract language in the Covad-BellSouth Interconnection Agreement that would obligate BellSouth to reimburse Covad for expenses incurred when it cannot meet a due date for service ordered by Covad. Experience has shown Covad that BellSouth will only adhere to the letter of its contracts. If a particular provision is not in the contract, Covad has had little luck obtaining service or assistance from BellSouth.

Remember, this issue arises from BellSouth's decision to place language in the contract requiring Covad to reimburse BellSouth for any changes or modifications to orders placed by Covad. All Covad seeks is equal treatment. If BellSouth believes it is entitled to be reimbursed each time Covad changes an order, than BellSouth should likewise reimburse Covad each time BellSouth changes an order.

Q. How does Covad propose to resolve this issue?

A. All we want is nondiscriminatory treatment. Either BellSouth must agree not to charge Covad for modifying or canceling an order or BellSouth must reimburse Covad when BellSouth modifies or cancels an order by changing the delivery date.

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?

Q. Should BellSouth be required to participate in joint acceptance testing on non-designed loops?

A. Yes. Joint Acceptance Testing is a safety net intended to catch non functional loops during the provisioning process, rather than forcing these problems to be resolved through the repair and maintenance process. This testing should be unnecessary because when Covad orders a loop, it should always receive a functional loop from BellSouth. Requiring BellSouth to perform Joint Acceptance Testing on all loops, including the new non designed loop, insures that Covad gets what it pays for. Once BellSouth proves that it is delivering functional loops with consistency, this testing will become unnecessary.

Q. How does Joint Acceptance Testing work?

A. Essentially, Joint Acceptance Testing works as follows. The BellSouth technician, having delivered the loop to the customer premises, calls a Covad 1-800 number. Next, the BellSouth technician and Covad run a series of tests on the loop (like having the BellSouth technician put a short on the loop) to establish

that it is functioning properly. Although it is not foolproof, these series of tests can determine in most instances whether the loop works at the time of installation. By requiring BellSouth to participate in Joint Acceptance Testing on all loops, including non designed xDSL loops, the Authority can ensure that more of BellSouth loops function properly at the time of delivery.

Q. What does Covad propose as the terms and conditions for Joint Acceptance Testing of a non-designed loop?

A. BellSouth should provide for Joint Acceptance Testing on every non-designed loop that it provides to Covad. BellSouth should be required to perform such testing before Covad will accept the loop as "delivered."

Q. At what cost should joint acceptance testing be performed?

A. First, I strongly believe that Covad should not be charged for this testing at all. It is only necessary to insure that BellSouth actually does what has it promised to do -- deliver a functional, fully connected loop. Covad developed this series of tests that they do cooperatively with BellSouth and other ILECs as a result of the ILECs' failures to properly provision loops. The testing procedure acts as a safety net. This saves both CLECs and BellSouth time and money because it identifies problems with loops during the provisioning process, rather than having these issues arise only as trouble tickets. In Covad's experience, Joint Acceptance Testing identifies instances in which BellSouth has not made the promised cross connections or has not made them properly. Thus, the testing confirms that BellSouth has not delivered Covad a functional, fully connected loop. Obviously, this testing safety net **should** be unnecessary. Given that the cost of delivering a

functional loop is built into BellSouth's rate structure, there should be no charge to Covad for this testing.

Q. What proposal has Covad made to BellSouth about Joint Acceptance Testing on the new non-designed (UCL-ND) loop?

A. Covad is willing to put its money where its mouth is. From experience, we believe that Joint Acceptance Testing on these loops will show that BellSouth is failing to provision a fully connected and functional loop the vast majority of the time. Thus, we proposed:

> BellSouth will provide joint acceptance testing on the UCL-ND for $40. If BellSouth delivers UCL-ND loops on time that are functional 90% of the time, Covad will pay for the Joint Acceptance Testing. If BellSouth does not deliver UCL-ND loops that are functional on time 90% of the time, BellSouth pays for the Joint Acceptance Testing.

We believe this is a reasonable proposal. If BellSouth can deliver functional loops on time at a level that enables Covad to successfully compete, Covad will have no need to require Joint Acceptance Testing.

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

Q. Why is it crucial that BellSouth not be allowed to unilaterally change the definitions and specifications for its loops?

A. BellSouth seeks to reserve the right to unilaterally change the definitions of loops

by changing its Technical Specifications. All Covad needs is a loop that complies with the engineering guidelines that BellSouth's network should already be designed to support. But we are trying to build a business based on loops as specified in the existing BellSouth documents and in our contract. BellSouth seeks to reserve the right to alter the definition and specifications of its loops unilaterally, by making changes to its Technical References. Covad's business plan relies on certainty and its ability to consistently order the loops as defined in its contract with BellSouth. Covad asks that BellSouth's loop definitions for DSL loops remain as defined in the contract and the Technical Specifications in place on the date of Execution of the Interconnection Agreement.

Q. In the Florida Arbitration, BellSouth called this a "ridiculous proposal" to address "an irrational fear." Do you agree?

A. No, but with comments like that, it is no wonder Covad seeks to have all of its rights and BellSouth's obligations set forth explicitly in our contract. BellSouth seeks to retain the right to change technical specifications (which govern the physical and performance characteristics). Changes to those specifications could effect our customers or future services we plan to bring to market. BellSouth believes it should retain the right to change loop specifications at will, and, in the Florida arbitration, BellSouth contended that it "would do it [make changes] in a positive way." BellSouth does not know what services we are providing or what services we are developing based on existing technical specifications, thus it is impossible for BellSouth to guarantee that changing those specifications will not effect Covad's service. This is not an irrational fear. Rather, it is a legitimate

concern of a viable business that seeks to successfully stay in business for the long run. Besides, if BellSouth is convinced it's changes will always be positive, why not present an amendment to Covad, explain the benefits of making the changes, and obtain Covad's approval. That, BellSouth will not do.

Issue 8: When Covad reports a trouble on a loop where, after BellSouth dispatches a technician to fix the trouble, no trouble is found, should Covad pay for BellSouth's cost of the dispatch and testing?

Q. Please explain the process that Covad goes through when there is a trouble on the loop and Covad must report it to BellSouth.

A. When Covad experiences trouble with a loop, Covad opens a trouble ticket with BellSouth. On numerous occasions, BellSouth has responded to the trouble ticket by saying "no trouble found," presumably meaning that BellSouth has dispatched a truck, tested the loop and found no problems. BellSouth then charges Covad for that dispatch. After several trouble tickets are opened on the loop, a joint meeting between Covad and BellSouth will occur. In many instances, BellSouth and Covad technicians then locate and resolve the problem. However, it is then incumbent upon Covad to challenge all of the incorrect "no trouble found" charges imposed on Covad.

Q. Should Covad be charged for BellSouth's dispatch and testing on a loop if BellSouth is not able to identify a trouble on that loop?

A. Absolutely not. That's the best way to preclude BellSouth from charging Covad for these types of trouble tickets. Covad proposes that BellSouth not be allowed to charge Covad when no trouble is found on the loop. Covad certainly does not

open trouble tickets without a problem on the loop and, as a matter of customer service, BellSouth should service the loops Covad orders. Moreover, Covad pays extraordinarily high recurring charges that are sufficient for all routine maintenance on the loops it orders. Moreover, Covad should certainly not be charged for trouble tickets that are prematurely closed. We know this is the case since many times Covad is forced to open multiple trouble tickets before BellSouth actually finds and fixes the problem. In Tennessee, for example, Covad has been forced to open more than one trouble ticket on 6% of the loops where a trouble ticket was opened at all. That means that 6% of the time, BellSouth is failing to cure the problem with its loop on the first trouble ticket. By not allowing BellSouth to charge Covad for trouble tickets when "no trouble" is found, BellSouth will have an incentive to cure the problems on the first ticket. At the very least, Covad should not be charged when BellSouth has improperly and prematurely closed the trouble ticket.

Q. What is Covad trying to accomplish under this issue?

A. Trouble tickets on which "no trouble is found" are a fallacy. Covad's DSLAM equipment enables it to check to ensure that its systems are working all the way to the demarcation point, beyond which BellSouth is responsible. Thus, the times when BellSouth will dispatch a truck and legitimately conclude that there is no trouble on the line are few, and would involve only situations in which a problem with a customer's inside wiring prevented the loop from functioning. What Covad is trying to avoid are the numerous and unnecessary trouble tickets it is forced to open repeatedly on loops, only to have BellSouth either not try to fix the

loop or give up before resolving the problem on the loop. Covad is trying to focus on why so many BellSouth trouble tickets are closed, reporting "no trouble found," when there are later problems identified on the loop.

Q. What does BellSouth propose as a solution for Covad to recoup this "no trouble found" charge?

A. In the Florida Arbitration, BellSouth agreed that it should not charge Covad for trouble tickets closed as "no trouble found," when it is later determined that there was a BellSouth problem with the loop which the BellSouth technician failed to diagnose and resolve. Nonetheless, BellSouth believes it should be Covad that bears the burden of reviewing the thousands of trouble ticket charges we get from BellSouth each month to determine which are the ones wrongfully charged by BellSouth. Why should Covad bear the burden and the expense of catching BellSouth's erroneous charges and then further spend resources to battle through a billing dispute on these issues with BellSouth.

Likewise, although BellSouth may argue that Covad can refuse to close the trouble ticket, that is no solution either. The problem is that once a BellSouth technician reports "no trouble found," BellSouth does nothing further to investigate a problem on the loop. Thus, having the trouble ticket remain open is not a solution to this problem. The bottom line is that problems on the BellSouth loop cannot be resolved by Covad. Only BellSouth can fix its own loop problems.

Covad believes BellSouth is responsible for erroneous "no trouble found" reports on trouble tickets. Either BellSouth should develop a mechanism for

tracking these and providing a credit, or BellSouth should not charge at all for these trouble tickets. As I've mentioned above, the legitimate "no trouble found" tickets will be few. The rest result from BellSouth's unwillingness to do what it takes to repair the loop.

Q. Does BellSouth routinely close trouble tickets as no trouble found ("NTF")?

A. Yes. BellSouth will close out a Covad trouble ticket to NTF and Covad assumes that is the end of it. There is no BellSouth process that allows Covad an option to keep the trouble ticket opened or put it in "delayed maintenance" status for 24, 48, 72 hours to allow for further testing. Even if BellSouth is offering to put this process in place now, it does not solve the problem. BellSouth should be investigating why so many trouble tickets are closed with no trouble found. Likewise, BellSouth should be investigating, as part of its customer service, why so many loops have repeat troubles, after a trouble ticket is closed, reporting "no trouble found."

If BellSouth would allow Covad to keep the trouble ticket open and would work with Covad on the trouble isolation until the trouble can be isolated, then we would not have deal with the issue of which party pays for a dispatch. Because BellSouth closes the trouble ticket to NTF, a charge is automatically generated to Covad for the dispatch. If trouble tickets are allowed to remain open until Covad accepts the loop as fully functional (and delivers to BellSouth a serial number confirming that acceptance), then this issue could be resolved. BellSouth has thus far refused to accept this solution.

ISSUE 11: What rate, if any, should Covad pay when it places a manual local service request, if there is no electronic ordering interface available?

(a) an xDSL loop?

(b) line sharing? (formerly Issue 19)

Q. What nonrecurring rate does BellSouth propose for a manual Local Service Request ("LSR") submitted for an xDSL loop and line sharing?

A. Under Covad's existing Interconnection Agreement, BellSouth charges Covad around $20 nonrecurring charge for each LSR that is submitted manually in Tennessee.

Q. Is this charge appropriate?

A. No. Such a charge is clearly anti-competitive. First, BellSouth retail customers are not required to pay any such manual order charges because BellSouth has developed electronic ordering systems for its own retail divisions. In contrast, BellSouth has delayed development of Electronic Data Interchange ("EDI") for pre-ordering and ordering of xDSL loops. As a result of this delay, Covad has been forced to submit orders manually, either using a facsimile or email. Covad must then follow-up and escalate each and every order manually as well. This process has had a severe and detrimental impact on Covad's business. BellSouth claims that it has now made electronic ordering available for xDSL loops, but all of BellSouth systems for handling these orders (LENS, TAG, EDI) are in the embryonic stage and are relatively unstable. Covad, for example, has experienced numerous problems with placing orders through LENS. At this time, Covad cannot place orders electronically for line shared loops.

BellSouth apparently now agrees that it should not charge a manual order fee if Covad is forced to place a manual service order because its electronic systems are unavailable for ordering. This admission recognizes that when BellSouth's systems are nonfunctional, rather than delaying orders, Covad is forced to use the manual processes.

Q. If BellSouth agrees that Covad should only be charged the electronic ordering rate when its systems are non-functional, then has this issue been resolved?

A. Unfortunately, no. Covad seeks to have BellSouth charge the electronic ordering fee when it orders UCL-ND, IDSL and line sharing loops, since Covad is unable to order those electronically at the time of this filing. BellSouth is obligated to make electronic ordering systems available for Covad, since they are available for its retail units. But with respect to these important loop products, BellSouth has failed to upgrade its systems to allow electronic ordering. Until it does so, BellSouth should not be entitled to further penalize Covad by making Covad pay the high manual order charges. Until BellSouth establishes a fully functional electronic ordering system for these loops and Covad has had time to develop its interface for such ordering, Covad should not have to pay the manual service order charge.

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?

Q. Does Covad believe it should be charged for submitting the LSR if BellSouth

has not delivered the loop within the required interval?

A. No. BellSouth unjustly states that it should be paid an LSR OSS charge even if it ultimately fails to deliver a loop to Covad or delivers that loop late. Covad strongly disagrees. Because of BellSouth's poor performance in delivering loops, Covad's customers often cancel orders while Covad is waiting for BellSouth to deliver a loop. BellSouth seeks to charge Covad the LSR submission fee for these cancelled orders, even if it is BellSouth that has delayed in providing the loop. BellSouth's proposal provides BellSouth a perverse incentive to delay delivery of Covad loops.

Q. What does Covad propose in this situation?

A. Covad proposes that BellSouth waive the LSR OSS charge if Covad cancels an LSR when BellSouth has failed to deliver a loop within the loop delivery interval. Covad believes this bright-line proposal would better align BellSouth's interests with installing Covad's loops, rather than delaying those installations. Requiring Covad to pay for LSR submission when BellSouth fails to meet loop delivery intervals only makes Covad suffer for BellSouth's poor performance.

Q. What types of problems has Covad experienced that causes it to seek this contract language?

A. Let me give you an example. Covad placed an order for a DSL loop for an end user in Memphis, Tennessee on August 26, 2000 with a desired due date of September 14, 2000. Covad repeatedly asked for the status on this order from August 29th through September 1st and BellSouth kept telling Covad that the order was still in the service inquiry (SI) process. Finally on September 2, 2000, Covad

received an FOC with a due date of September 13, 2000 even though Covad had requested a due date of the 14th. BellSouth did not call Covad to cooperatively test on September 13th or 14th. Covad escalated the order with BellSouth and discovered the order was never completely worked even though an FOC was sent to Covad. During the escalation it was discovered that the FOC sent to Covad was for another CLEC's customer. Covad did not get this explanation until September 26, 2000. Covad requested that BellSouth expedite the order and got a delivery date of October 4, 2000. On October 4, 2000, BellSouth never called to cooperatively test the loop with Covad. Covad later discovered BellSouth had placed the order in missed appointment status. The end user cancelled out of frustration on October 13, 2000.

When this happens, Covad is penalized twice: once when we lose the customer and a second time when we have to pay cancellation charges because BellSouth failed to deliver the loop in a timely manner.

ISSUE 19: Where electronic access to operational support systems for line sharing is not available, should BellSouth be allowed to charge a manual service ordering charge?

I have addressed this issue as 11(b).

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

Q. Should BellSouth be required to provide accurate service order completion notifications for line sharing?

A. Yes. Remember, provisioning a line shared loop requires no truck roll. All BellSouth has to do is perform some simple cross connections in the central office. Covad seeks accurate information from BellSouth confirming that the cross connections necessary to provision a loop have been performed. It's that simple. BellSouth refuses to send Covad a service order completion, like it does for other loop orders. Our experience shows that BellSouth routinely fails to perform the cross connections on time, which makes accurate service order completion notices even more important.

Q. Has BellSouth provided a suitable accurate and timely service order completion system?

A. No. BellSouth has given CLECs access to two reports on its web site called the COSMOS CFA Report and the SWITCH CFA Report. However, these reports are not completion notifications. Instead, they are lists of working cable, pair, and splitter assignments listed by CLLI code and telephone number.

Q. Why are the COSMOS/SWITCH reports not a suitable and accurate timely service order system?

A. This solution is not an active completion notification that is sent to Covad. It is merely a stop-gap solution to a larger issue. The notification that is sent to the CLECs only show the completion of the billing order and not that the physical

cross-connects have been completed in the central office. Ironically, the system is clearly designed to start billing at the earliest possible point, but the system apparently is not set up to ensure that the work for which Covad is billed has been done. BellSouth says they have put in place a manual system to prevent this from happening, but we are not convinced that works.

Further, Covad must actively go to BellSouth's web site to view the reports and to search for orders that *should* be completed. If the phone number is on the report and has a "wk" or working status, it means that the BellSouth CO technician has completed the work order for the central office cross-connects for the line sharing. This means that the line sharing should be complete and working.

The reason that there are two reports is that BellSouth has two internal facilities and assignment systems---COSMOS and SWITCH. COSMOS is the older system that is gradually being replaced by SWITCH. This means that Covad must look in both reports for each order to see if BellSouth completed the work on the due date. If the number is not on the report and it is past the due date, BellSouth has instructed CLECs to open a trouble ticket with its repair and maintenance center. Obviously, this is an unworkable system.

Q. How does this inaccurate and unusable information affect Covad?

A. Covad depends upon BellSouth to accurately and timely notify Covad that work has been completed on line shared loops. BellSouth's failure to provide accurate service order completion notices for line-shared UNE orders jeopardizes Covad's ability to effectively compete for customers in the state of Tennessee. When

Covad receives inaccurate service order completions from BellSouth, Covad wastes time and effort attempting to get its customer's service going -- only to learn that the DSL service cannot work because BellSouth had not yet accomplished the limited cross connection work necessary to provision the line shared loops. Covad has been plagued with inaccurate information recorded on the various databases and spreadsheets BellSouth forces Covad to use to ascertain the status of its orders.

Q. What does Covad propose?

A. Covad wants BellSouth to produce to Covad a daily list of completed line share orders.

Q. Why should BellSouth provide a daily completion report to Covad for line sharing orders?

A. Although, BellSouth has attempted to provide systems (CSOTS and COSMOS/SWITCH REPORT) to Covad that would provide information on successful completion of line sharing order, these systems are not adequate. BellSouth should simply provide a daily email listing all of the line sharing orders that were completed by BellSouth on the previous day. Covad could verify this against its records based on the FOCs received.

Q. Have other ILECs provided such completion reports?

A. Yes. Qwest developed a similar completion report that it emailed to Covad until about April 2001. At that time, Qwest developed another web based system that provided completion information. Covad use of that system gave it confidence that it would provide the necessary information in a timely and accurate way. As

a result, Covad and Qwest together decided that the daily reports were no longer necessary. If Covad reaches the same level of confidence about the BellSouth SWITCH/COSMOS reports (which we still find difficult to manage and largely unsearchable), Covad would certainly be willing to suspend this practice with BellSouth. Nonetheless, at the present time, Covad needs those reports to obtain accurate information that is not currently being made available to it.

Q. Has Covad requested such a daily line sharing completion report?

A. Yes. Through the weekly line sharing collaborative Covad asked if BellSouth could provide a daily completion report as I discussed above.

Q. In the Florida arbitration between Covad and BellSouth, BellSouth also asserted that the CLEC Service Order Tracking System (CSOTS) provides an accurate service order completion notification. Do you agree?

A. Absolutely not. Although this system allows Covad to check the status of the billing order and recently allow Covad to check the status of the provisioning order, it does not provide accurate service order completion. Remember, provisioning a line-shared loop requires no truck roll. BellSouth only has to perform simple cross connections in the central office. Covad seeks accurate information from BellSouth confirming that the cross connections necessary to provision a loop have been performed. It's that simple. BellSouth refuses to send Covad a service order completion, like it does for other loop orders.

Q. Can you explain why CSOTS does not provide accurate service order completion for line sharing orders?

A. BellSouth argues that Covad can get the information it needs from CSOTS. This is not true. CSOTS is designed so that line sharing provisioning service orders automatically complete or "auto-complete" on the due date. Therefore, even if the physical provisioning work in the central office has not been performed, the service order will be listed as complete in CSOTS on the due date that is carried on the order. Once again, this information has no relationship to whether the actual work has been done to provision a line shared loop. This would not be a problem if the BellSouth central office technicians actually completed the work on the due date 95 percent of the time. Unfortunately, that is not what Covad has experienced to date with respect to BellSouth line sharing provisioning.

In May, Covad line sharing installations failed on 28% of the loops. These failures were due to either BellSouth's failure to complete cross-connections on time or BellSouth's failure to perform the cross-connections correctly. Because Covad does not always dispatch a technician on the BellSouth delivery date or the customer does not always attempt an install using a self-install kit on the BellSouth delivery date, the 28% failed is actually a very low number. It would probably be much higher if Covad could attempt to install on the BellSouth due date. BellSouth continually misses the delivery of line sharing loops because they do not complete the necessary central office cross-connections on time. Covad needs to know that the provisioning work has actually been completed. Since Covad is paying for this work, we believe this is a reasonable request.

Q. Why are these completion notifications methods proposed by BellSouth not accurate for line sharing orders?

A. Line sharing provisioning orders "auto-complete" on the due date. Therefore, even if we submit an order for line sharing electronically and are returned an electronic completion notification from BellSouth, it does not really mean that provisioning of the order is complete. Because of this auto-complete mechanism, CLECs have no way to know if the physical work in the central office has been completed on time. Covad has continued to experience problems with BellSouth completing the central office cross-connects on the due date. For this reason, Covad has requested a line sharing completion report be sent to Covad daily. This report must be based upon BellSouth's COSOMS/SWITCH database since this is the only means to determine if the physical work has been done. A completion notification that is truly accurate is crucial for Covad to provide competitive DSL service to Tennessee consumers.

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

Q. Why is it crucial that BellSouth test for data continuity during provisioning and repair and maintenance of line sharing?

A. During the initial implementation of line sharing, Covad experienced numerous problems with ensuring that BellSouth had completed the work necessary to provision the loop. As a result of the FCC Line Sharing Summits, Covad and BellSouth determined that BellSouth technicians were testing line-shared loops

only for working voice service. BellSouth technicians did not test to insure that BellSouth had properly completed the cross connections on the data line from the splitter to the collocation space.

Q. Has BellSouth since implemented data continuity testing in both for provisioning and repair and maintenance?

A. Yes. BellSouth has implemented the use of the Line Sharing Verification Test Set (LSVT) in most of its central offices. As of April 12, 2001 BellSouth reported that approximately 420 central offices had the LSVT. BellSouth began deployment of the LSVT in January 2001. It also modified its methods and procedure for its central office technicians to use the test set during initial provisioning of line sharing and also during repair and maintenance. This is a good first step.

Q. Does the LSVT provide the necessary data continuity testing that Covad needs to assure that BellSouth has accurately provisioned and repaired line sharing orders?

A. No. While the LSVT is a good step towards providing good quality line sharing orders to Covad, it does not provide Covad with all that it needs regarding this issue. BellSouth has testing capabilities that it uses for its own retail ADSL that it refuses to use for Covad line sharing.

Q. What capability does BellSouth use to test its own retail ADSL?

A. Covad has learned that BellSouth uses a Sunset ADSL test set to test its own ADSL services. Covad discovered this when several BellSouth CO technicians actually used these sets to successfully test Covad line sharing circuits. With the

success that we have experienced using the Sunset ADSL test sets in a few offices, Covad requested during the line sharing collaborative that BellSouth use these test sets to provision Covad's line shared service. BellSouth responded the Sunset test set could only be used for BellSouth retail ADSL orders, not Covad's wholesale orders.

BellSouth seemed to be under the impression that the Sunset test set might not work on equipment other than that used by BellSouth for its retail service. As a result, Covad researched the Sunset ADSL test set manufactured by Sunrise Telecom. We discovered that it is designed to work with DMT4 ADSL Line Cards -- the same type of line cards which Covad uses on all line sharing orders and BellSouth uses for its ADSL service.

Q. Why should BellSouth use the Sunset ADSL test set for Covad line sharing orders?

A. Unlike the LSVT test set, the Sunset ADSL test set would provide Covad repair representatives located in Covad's repair center with visibility into the configuration of our line sharing circuits and improve our cooperative testing abilities during the repair and maintenance process.

Q. Should BellSouth still use the LSVT for the provisioning of line sharing circuits for Covad?

A. Yes. The LSVT test allows the BellSouth central office technicians to double-check the cross-connections and jumpers when initially wiring Covad line sharing orders. The Sunset ADSL test set would only be used in a repair and maintenance situation.

Q. Does this mean that the Sunset test set would not be used if Covad was having trouble turning up a line sharing circuit initially?

A. No. The way that BellSouth has implemented its processes, as soon as the due date for an order has passed, BellSouth considers it a maintenance issue. Today, Covad must open a trouble ticket on a new order that is having a problem, even though it has never been successfully turned up on the provisioning side.

Q. Do you think that BellSouth could easily modify its methods and procedures to begin using the Sunset ADSL test set for Covad line sharing orders?

A. Absolutely. Since BellSouth uses these for its own retail ADSL service, it can easily be used for Covad's service as well. The benefits to Covad are enormous, and use of the test set will also help BellSouth resolve quickly problems on the orders.

ISSUE 31: Should BellSouth resolve all loop "facilities" issues within thirty days of receiving a complete and correct local service request from Covad?

Q. Why is it crucial that BellSouth resolve loop facilities issues within thirty (30) days of receiving a complete and correct LSR?

A. This issue is similar to that addressed in Issue 5 (loop provisioning intervals, in particular Issue 5(a) and (b)). BellSouth has proposed language that would only obligate it to resolve "facilities" issues for a Covad loop order in an unspecific manner. As described in Issue 5 above, Covad believes it is vitally important that the loop installation process be as predictable and uniform as possible. Allowing BellSouth to claim that a loop is presented with a "facility" issue without placing

a time frame around resolution of that issue essentially gives BellSouth the unilateral power to delay Covad loop installations.

To give you a sense of how serious a problem this is, Covad estimates that over 48% of its cancelled Tennessee orders were placed in a "pending facilities" queue by BellSouth. Similarly, of Covad's working loops in Tennessee, more than 11% percent experienced facilities issues. BellSouth believes that its legal obligations require it only to offer a parity interval for resolving facilities issues, but BellSouth steadfastly refuses to produce any documentation to prove that it is currently resolving pending facility situations at a parity level. Instead, BellSouth believes Covad should take its word that it is performing at a parity level.

As discussed above, firm and predictable installation intervals would result in better end-user customer service, would help detect breakdowns in BellSouth's provisioning systems, and would expedite dispute resolution procedures.

Q. Can you provide an example of an end user in Tennessee who cancelled because of waiting for delivery of the loop that has been placed in pending facilities status with no estimated due date?

Yes. The first example I would like to discuss is for an end user located in Hendersonville, Tennessee. The ADSL unbundled loop order was placed with BellSouth on June 26, 2000 and the firm order confirmation (FOC) was received on June 29, 2000 with a due date of July 12, 2000. It should be noted that this delivery date is **12 business days** after the FOC, far exceeding even BellSouth's targeted 7 business date delivery. Covad conducted testing on the loop using its

equipment and during joint acceptance testing to make sure that the loop has been delivered on the due date. When Covad and BellSouth jointly tested this loop it showed "open" in the central office, which means that BellSouth cross connection from the BellSouth cable to the Covad point of termination has not been made. In layman's terms, it means that the loop has not been delivered when our equipment shows "open." To resolve the problem, the BellSouth technician attempted to get in touch with the central office while Covad was on the phone. When he could not do so, a call back was set for the next day. The next day, BellSouth apparently fixed the problem in the central office and again tested with Covad, only to isolate a problem with facilities. This loop order is placed into the pending facilities queue. A few days later, Covad checked the Pending Facilities list posted by BellSouth (a list of order numbers that have been put on indefinite hold pending resolution of facilities problems), which states that a new F1 pair is need. BellSouth provided no estimated due date.

On July 17, 2000, Covad received a new FOC with a due date of July 21, 2000. When Covad called to confirm the delivery date of July 21, 2000, BellSouth informed Covad that it could not meet the delivery date of July 21 and that the loop order had been put back into pending facilities. On July 27, 2000 BellSouth requested that Covad perform a pre-test to insure that the loop was finally provisioned. Although Covad never received a new FOC delivery date, BellSouth stated that it was attempting to install the loop on July 28, 2000.

Unfortunately, the loop again failed the testing as a result of additional facilities problems, apparently still located in the F1 pair. On July 28, 2000, BellSouth put the loop order back on the pending facilities report with no estimated due date. On August 8, 2000, Covad called BellSouth get a status on the order. BellSouth indicated that Covad must issue a supplemental order requesting a new due date for the loop. Covad issued a supplemental order with BellSouth on August 10, 2000 requesting a due date of August 10, 2000. On August 15, 2000 Covad received the new firm order confirmation with a due date of August 17, 2000. Again, Covad rescheduled the delivery date with our end user customer. On August 17, 2000, the customer waited at home for his loop delivery and again the loop failed the cooperative tests. Covad opened a trouble ticket with BellSouth, but by this time the customer was so frustrated, he canceled the order.

Q. Can you provide other examples?

A. Yes. There are many. And the problem is not always the duration of the pending facility resolution. The problem can often be Covad's inability to set customer expectations by saying, "There is a facilities problem, but BellSouth is obligated to resolve it in 7 days" For example, Covad had a customer located in Collierville, Tennessee who was attempting to order IDSL service. On October 20, 2000, Covad submitted the order to BellSouth. Covad did not receive the firm order confirmation (FOC) until October 24, 2000 and it had a due date of October 31, 2000. On October 25, 2000, the order went into pending facilities status with no estimated due date. Over the next couple of weeks the status remained the same -- pending facilities with no estimated date for clearing the problem. Covad

kept communicating to the customer that the order was still in pending facilities (PF) status, but Covad was unable to inform the end user of any estimated time for clearing the issue. By November 10, 2000, the end user was tired of waiting and cancelled the order. Without Covad being able to have an interval for when a facilities issue should be clear, Covad is unable to set the customer's expectations for when the loop will ultimately be delivered.

If we could set customer expectations based on a reasonable interval for resolving these problems, we could decrease cancellations.

Likewise, take the example of a customer in Memphis, Tennessee. Covad issued the order for the HDSL unbundled loop on March 21, 2001 and received the firm order confirmation on March 26, 2001 with a due date of April 4, 2001. On April 4, 2001 Covad never received the call from BellSouth to cooperatively test the loop. Covad ran several loop tests using its equipment in the central office and the circuit showed open in the central office. This means that the BellSouth provisioning process failed on many levels. First, BellSouth's own purported testing did not identify a problem with the loop. Second, BellSouth did not follow its process, which requires BellSouth to cooperatively test these loops with Covad. As a result of the loop failing to be provisioned properly, Covad made several calls to the Local Carrier Service Center ("LCSC") to find out the status of the order and it was eventually discovered that BellSouth made an error when issuing the service orders. Covad was told that the LCSC representative that

worked the order got information on two orders confused and therefore the orders went into error status after the FOC was sent to Covad. On April 30, 2001 BellSouth finally issued a new FOC with an expedited due date of May 4, 2001. On May 4, 2001, Covad and BellSouth cooperatively tested the loop and it was discovered that there was no F2 pair available. The order was placed into pending facilities status with no estimated due date. On May 14, 2001, the customer cancelled the order because he was very upset about the delays and the fact that Covad could not give him an estimated date when the facilities issue would be cleared. We still do not know how long it took BellSouth to clear the facilities problem or if it was ever cleared.

Q. In the Florida arbitration proceeding, BellSouth argued that it is not reasonable to place an arbitrary, artificial time limit on when facilities issues can be resolved. Do agree that the intervals that Covad is requesting are arbitrary or artificial?

A. Absolutely not. Covad is simply asking this Authority to set reasonable intervals for BellSouth to clear facilities issues--not arbitrary or artificial intervals. When I was at BellSouth, I remember that the internal goal for clearing facilities was 30 days. You were measured by that goal as part of your performance plan. In fact, in his Florida testimony, BellSouth witness Kephart stated that BellSouth sets an internal goal of resolving pending facilities within 30 days. Moreover, he stated that historically only a tiny fraction of loops are left in a pending facilities

condition over 30 day. If that is accurate, I do not understand why BellSouth is arguing against a firm deadline for trying to resolve these issues.

Q. What is the ultimate goal regarding clearing facilities problems on loop orders and what do you propose as a solution?

A. The goal is to not have customers wait indefinitely for service. Although I believe that a 30-day interval is reasonable, our discussions with BellSouth have lead us to develop the following proposal. BellSouth should categorize facility issues into three types: 1) defective cable pairs; 2) facilities exhaust conditions; and 3) new construction.

The interval to clear a defective cable pair to make a facility available should be no more than seven (7) calendar days. For a facility exhaust condition, one of which BellSouth should already be aware, the interval should be thirty (30) calendar days. Finally, for new construction, the interval should be the same that BellSouth quotes for its retail POTS service.

Q. Again, in the Covad-BellSouth Florida arbitration, BellSouth states that other factors such as natural disasters can influence the time required to resolve facilities issues. Please comment.

A. Covad understands that repair and maintenance after a natural disaster takes the highest priority, but natural disasters do not happen everyday. The Authority should not be persuaded by such a red herring. Covad has already agreed to agree to contract language indicating that the intervals for resolution of facility issues will be waived in the event of a natural disaster. In fact, the Force Majeure provision in the contract (already agreed upon by the parties) specifically relieves

BellSouth of all of its obligations under the Interconnection Agreement while recovering from such disasters. BellSouth, as always, wants this Authority to base its decision on the worst possible case scenario. Covad would like this Authority to address the type of facility problems that it experiences everyday in its dealings with BellSouth.

The issue that Covad is asking the Authority to decide is what should be the standard interval be for clearing facilities, so that Tennessee consumers aren't continually frustrated when they have to wait months to receive service.

Q. Does that conclude your direct testimony?

A. Yes.

Exhibits to Tom Allen Testimony

BellSouth investor news

INSIDE:

Data – revenues top $1 billion
The Communications Group – driven by strong growth in data
Domestic Wireless – Cingular delivers strong customer and revenue growth
Latin America Group – delivers strong customer and operating cast flow growth
Worldwide Wireless
Additional Details

BellSouth Reports First Quarter Earnings

- Data revenues top $1 billion for first time, gaining 28%
- Increase in DSL customers brings total to 303,000
- Cingular Wireless surpasses 20.5 million cellular customers
- Latin America customer growth approaches 53%
- Results reflect impact of DSL and Colombia growth initiatives

ATLANTA, GA, April 19, 2001 – With strong volumes in the growth areas of data and wireless, BellSouth Corporation (NYSE: BLS) reported normalized earnings per share (EPS) of 52 cents in the first quarter of 2001, including a 2-cent reduction related to foreign currency losses. This compared to normalized EPS of 52 cents in the same quarter a year earlier.

As previously disclosed, the first quarter of 2001 reflected BellSouth's accelerated growth initiatives in domestic broadband and Latin America wireless. The company's accelerating ramp-up of DSL high-speed Internet access service reduced EPS an incremental 2 cents compared to the first quarter of 2000. BellSouth's wireless operations in Colombia, which were acquired in July 2000 and not included in the first quarter a year ago, reduced EPS 3 cents.

BellSouth's Colombia acquisition creates that country's first nationwide mobile cellular operator covering a total of 41 million people, with proportional customers of 738 thousand. BellSouth's other major initiative is a rapid DSL ramp-up that will allow the company to nearly triple its DSL customer base to 600 thousand at the end of 2001, as compared to year-end 2000. Service will be available to over 70% of BellSouth's households, over 1,000 central offices and over 9,300 remote terminals – nearly doubling the number of central offices and remote terminals equipped.

Revenue growth – reflecting BellSouth's 40% share of Cingular Wireless – was 10.5%. Growth was boosted by a strong 28% increase in data revenues. Data continues to be a strong driver of revenue growth, and this quarter represented nearly one-third of our total revenue growth. For the first time ever, quarterly data revenues exceeded the $1 billion level. Data revenues were driven by a record 25.4% jump in equivalent access lines. In addition, DSL customers increased 41% versus 4Q00, surpassing 300 thousand customers. BellSouth is confident of reaching its target of 600 thousand DSL customers by the end of 2001.

Another strong driver was worldwide wireless customer growth. The company added nearly 1.3 million proportionate customers in the quarter – including the recently acquired operations in Colombia. This phenomenal wireless growth was driven by BellSouth's Latin American markets, where our customer base grew 53% in the past year, to 7.8 million customers. Domestically, Cingular Wireless ended the quarter with over 20.5 million cellular and PCS customers.

Total operating expense grew 10.4% in the quarter, driven by the inclusion of our accelerated growth initiatives in DSL and Latin America, specifically, the recently acquired wireless properties in Colombia. In addition, strength in Cingular gross adds and the Cingular national branding kickoff costs drove expenses higher.

Complete financial statements and the first quarter 2001 earnings press release can be accessed at www.bellsouth.com/investor

BellSouth

investor news

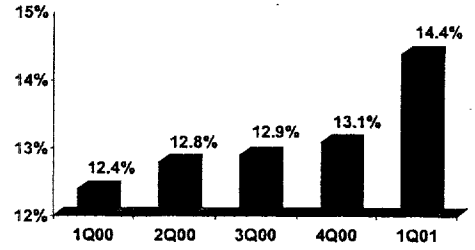
Data
Data revenues top $1 billion

BellSouth continues to transform its core network from analog voice to digital data. More than three-quarters of the $5.3 billion of network investments made in 2000 is doing double duty to enable New Economy products and services. And BellSouth's network already has 3.5 million miles of fiber.

The marketplace clearly has responded to this data-centric transformation. Already two-thirds of BellSouth's network traffic is data, and in the first quarter of 2001 total equivalent access lines grew a record 25.4%. This includes traditional switched lines as well as broadband data services. Equivalent business lines alone grew 38%. BellSouth's innovative products and services help drive customer demand for broadband data, as customers migrate from traditional voice lines to broadband data and other high-speed digital services.

Driving the first quarter, BellSouth grew high capacity digital and data lines by 58% and produced record data revenues of $1.03 billion, a 28% growth rate. Data revenues alone contributed nearly one-third of the total consolidated revenue growth in the quarter. High-speed data services, such as LightGate® – a service that integrates data, voice and video over a fiber based private line service giving businesses the equivalent of 672 circuits – drove the growth in data revenues. In addition, web hosting, DSL and e>commerce applications were among the leading drivers of data revenue growth.

BellSouth
Data Revenue as % of TOR



DSL customers increased 41% in first quarter, to 303 thousand. The company added an average of over 1,300 customers per business day, and is currently installing next generation DSLAMs, which provide a 21% improvement in cost performance per line. The daily install rate is expected to accelerate over the next three quarters. BellSouth is confident of reaching its goal of 600 thousand DSL customers by the end of 2001. Over 90% of new residential DSL customers are opting for self-install, and about 75% successfully install it – reducing the need for a home visit. The popular self-install option is being enhanced by deployment of BroadJump's broadband solutions tool kit giving BellSouth an end-to-end broadband solution. The tool kit allows BellSouth to monitor, test, and maintain a customer's DSL connection and enables customers to determine if their system can support a broadband connection. It also provides customer instructions to establish connectivity and helps customers solve routine connection problems, often without help desk support.

	1Q01 (2)	1Q00	% chg
EPS - Reported Diluted	$ 0.47	$ 0.53	N/A
Loss on Sale of Qwest common stock	$ 0.02		
Post-retirement benefit expense	$ 0.02		
Loss from wireless video business			
Gain on E-Plus restructuring		($0.04)	
Severance Accrual		$0.03	
EPS – Normalized (1)	**$ 0.52**	**$ 0.52**	**0.0%**
Colombia Impact	$ 0.03		N/A
DSL Impact	$ 0.02		N/A
Foreign Currency Losses	$ 0.02		
EPS Adjusted for Colombia, DSL, & FX	**$ 0.59**	**$ 0.52**	**13.5%**

(1) Normalized EPS for first quarter 2001 does not sum due to rounding.
(2) See press release for an explanation of the normalizing items.

Effective 1Q01, BellSouth adopted new segment reporting to align financial reporting with management of the business. Please see our March 26, 2001, BLS Investor News at www.bellsouth.com/investor for more details about BellSouth's new segments.

BellSouth already has over 5,600 remote terminals and nearly 650 central offices provisioned for DSL – and is well on its way to having over 9,300 remote terminals and over 1,000 central offices equipped for DSL by the end of 2001. In addition, DSL will pass over 70% of BellSouth households by year-end.

BellSouth recently announced an agreement with Dell to jointly market broadband-enabled computers with a pre-installed DSL modem and pre-loaded BellSouth FastAccess DSL software, giving customers plug-and-play broadband solutions. DSL is a primary driver of the growth in BellSouth Internet Services, which now has over 1 million customers.

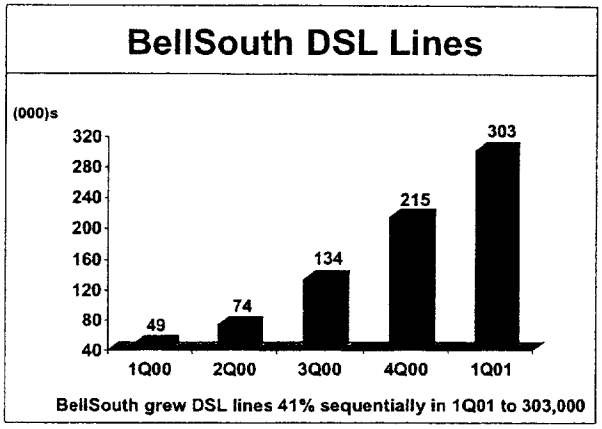
BellSouth DSL Deployment Stats

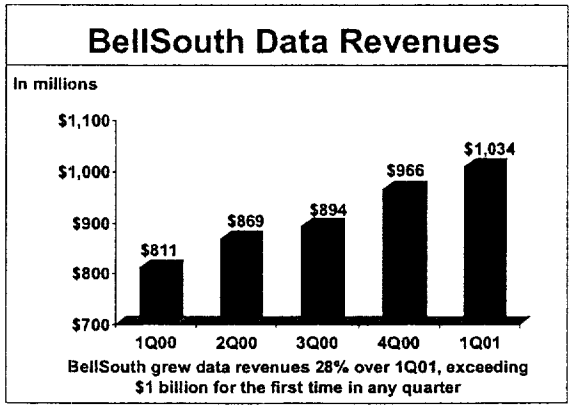
	Actual at 12/31/00	Actual at 03/31/01	Target at 12/31/01
Markets	46	56	63
CO's Equipped	508	625	>1,000
RTs Deployed	4,881	>5,600	>9,300
HHs Passed	45%	nearly 50%	>70%
Lines Passed	>10M	nearly 11M	>15.5M

BellSouth's recent data offerings include two e>business centers in Atlanta and Miami – which already host over 25 thousand websites. The company offers a broad spectrum of e>business content, storage, security and application services. In the near future, the centers will host network-centric applications like customer care and VPN access. Recently, the centers passed the rigorous requirements of IBM's Hosting Advantage program, which identified the BellSouth centers as world-class hosting environments. The market opportunity in the Southeast for these services will be somewhere in the $4 - $6 billion range by 2004. BellSouth expects to gain 10% - 20% of this market.

In addition, during the quarter, BellSouth and IBM formed an alliance to deliver turnkey e>business solutions to small and mid-sized businesses throughout the Southeast. The alliance includes sales, marketing and business development initiatives that will build upon IBM's and BellSouth's extensive network of distribution partners who market to businesses in the Southeast – providing a solution that customers in this market normally don't have the resources to do in-house. The alliance enhances BellSouth's e>business strategy and state-of-the-art hosting centers and builds upon joint marketing and distribution channels to tap into the multi-billion dollar e>business infrastructure market.

During the quarter, BellSouth became the first and only data network provider offering sub-rate T3 service, a new frame relay product that offers businesses true bandwidth-on-demand from 3 Mbps up to 44.2 Mbps. The service provides customers the rapid scalability, reliability and reduced provisioning intervals needed in today's electronic marketplace. With over 80 thousand frame relay customer sites in its markets, BellSouth recognized that users need a cost-effective, flexible solution that easily expands beyond T1 speeds.





The Communications Group
Driven by strong growth in data

BellSouth's Communications Group represents the company's core domestic businesses, including: all domestic wireline voice, data, broadband, e-commerce, long distance, Internet services, and advanced voice features – all of which are provided to our array of customers, including residential, business, and wholesale. On the BellSouth normalized income statement, Communications Group revenues grew 3.0% in the quarter, driven by strong growth in digital and data revenues, wholesale revenues, and by the company's marketing of calling features, and were offset by competition, rate reductions and the slower growth in access lines, reflecting a slowing economy.

In the Communications Group segment, local service revenue increased 2.9% -- impacted by competition, rate reductions, and the slower growth in access lines, which reflects a slowing economy. Excluding an adjustment related to a one-time retroactive rate settlement, operating local revenue grew nearly 4%, boosted by strong growth in digital and data revenues, wholesale revenues (ending the quarter with 1.4 million wholesale lines in service), and by the company's marketing of calling features.

Calling Features and Other Enhanced Services
Calling features generated $567 million in revenues in 1Q01, growing 10.1% over 1Q00 to total nearly 60 million features in service. Growth was driven by sales of Complete Choice® -- a package combining a basic telephone line with various calling features. Sales of the Complete Choice family of products grew 18% in 1Q01 to 5.6 million packages, a 31.4% penetration rate. BellSouth's leading calling features include:

- Caller ID, which increased 12% to over 8.6 million -- a 47.5% penetration rate of residential customers.
- Call Waiting Deluxe, which grew 26% in the past year to nearly 4.9 million features in service, a 28% penetration rate.
- BellSouth VoiceMail, which climbed 14.5% to nearly 3.4 million mailboxes, a 17% penetration rate.
- Privacy Director, a service that BellSouth began offering last year, enables customers to screen out unwanted calls. The service gives the customer the option of answering a call, ignoring a call, or sending a sales-reject message. While still in the early stages, the service has grown over five-fold in the past year, to nearly 600 thousand customers.

Access Lines & Revenues
Network access revenue grew 0.4%, impacted by higher incremental rate reductions and slowing access MOU growth.

Total switched access minutes of use fell 2.7% in 1Q01, the result of continued migration of minutes to dedicated digital and data services and to competitive services, such as wireless and Internet e-mail.

Long distance revenue increased 0.6%, driven by the strong growth in wireless long distance and offset by the demand for Area Plus, a package that combines a basic telephone line with an expanded local calling area, and also offset by toll market share loss. Area Plus packages grew 19% in the past year to nearly 1.9 million. Long distance messages declined by 20.6% in 1Q01, a result of competition and the demand for Area Plus.

Other Communications Group Revenue increased 5.7%, driven by growth in wireless interconnection revenues and offset by a reduction in payphone revenues, as BellSouth begins the transition out of this business that will be completed by December 2002.

Communications Group Expenses
The Communications Group EBITDA margin was 53.1% in 1Q01, compared to 52.7% in 1Q00. Communications Group total operating expenses increased 3.3%, driven by expenses related to data initiatives and higher depreciation and amortization expense – primarily due to the deployment of software since first quarter 2000. This was offset by lower discretionary expenses.

Domestic Wireless

Cingular delivers strong customer and revenue growth

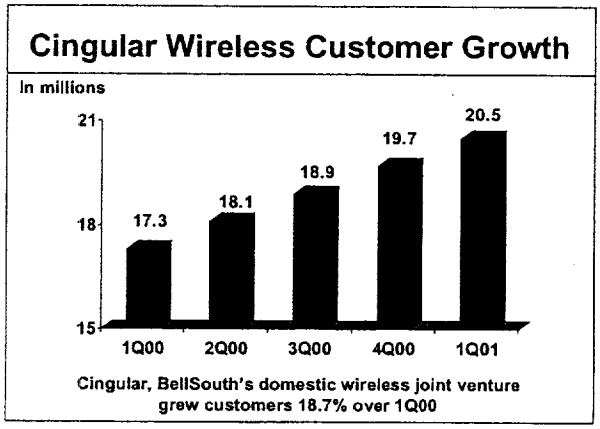
Cingular, BellSouth's domestic wireless joint venture, generated strong net adds of 854 thousand and grew revenues by 14.6% during the first quarter of 2001. Cingular's nationwide footprint serves over 20.5 million cellular and PCS customers with an array of data and voice services.

Driven by the excitement surrounding the nationwide branding campaign and an increasing demand for wireless services, Cingular revenues increased 14.6% to $3.3 billion. EBITDA improved 4.2% over 1Q00 to $972 million and the EBITDA margin increased sequentially from 4Q00 to 31.7%, a 320 basis point improvement. Strong net additions, national branding launch and one-time merger related initiatives impacted operating expenses.

Cingular added 854 thousand net cellular and PCS customers during the first quarter of 2001, a 22.9% increase over last year. Cingular's innovative marketing and effective segmentation programs for both post and prepaid products, coupled with an array of data offerings are attracting quality customers while generating strong growth. Cingular ended the quarter with 20.5 million customers, an increase of 18.7% over the prior year. In addition, Cingular Interactive more than doubled its customer base over prior year to bring the total customers to 657 thousand, adding 84 thousand customers during the first quarter.

Cingular currently operates in 42 of the top 50 MSAs with about 192 million POPs, while the pending receipt of New York will bring that number to 43 MSAs and about 211 million POPs. Salmon PCS, of which Cingular is an 85% non-controlling equity owner, was a winner of spectrum in the recent 1900 MHz band auction. The spectrum covers approximately 77 million POPs; 28 million of these are in five markets where Cingular currently has no presence.

To service its nationwide footprint, Cingular continues to provide innovative product offerings. During this quarter, Cingular completed a nationwide roll-out of



wireless Internet (WAP) capabilities. In addition, Cingular announced "Wireless Internet Express," which ushered in always-on connections for virtual instant access to e-mail, Internet, games and other services.

In an ongoing effort to create synergies and streamline customer service functions throughout the United States, Cingular announced the opening of six new state-of-the-art, multi-functional regional customer care call centers at the beginning of April. The centralization and consolidation of customer care centers will allow Cingular to provide consistent, high quality service in a cost-efficient manner.

Beginning in the fourth quarter of 2000, BellSouth's reported consolidated income statement no longer reflects revenues and expenses from domestic wireless. Net earnings from BellSouth's share of Cingular are included in Other Income on BellSouth's Consolidated Statement of Income – Reported Basis. Cingular's pro forma financial statements for 1Q01, and for 1999 and 2000, can be accessed at www.bellsouth.com/investor.

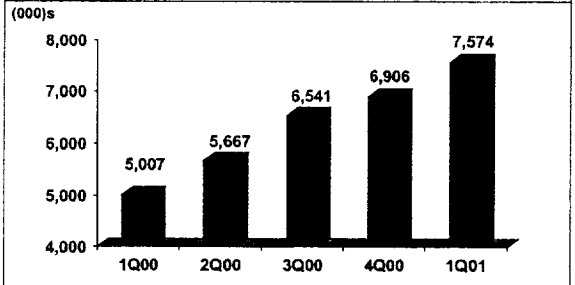
Latin America Group

Delivers strong customer and operating cash flow growth

Consolidated revenues from BellSouth's Latin America segment grew 13%, driven by Colombia and Chile. BellSouth's consolidated international properties include Argentina, Chile, Colombia, Ecuador, Nicaragua, Peru and Venezuela. Revenues were impacted by a delay in publication of directories by Listel, one of the company's Advertising and Publishing subsidiaries in Brazil. Excluding this impact, revenues grew 15% to $781 million in the first quarter. Consolidated ARPU declined to $28, impacted by the increased penetration of cellular service into the mass-consumer market.

Despite the decline in ARPU, consolidated EBITDA increased 33% to $152 million, and the operating cash flow margin improved 300 basis points over 1Q00. Proportionate EBITDA improved more than 41% over 1Q00, reflecting strong operational performance in Brazil. The Latin America Group portfolio generated a net loss for the quarter of $106 million, primarily related to the Colombia acquisition and foreign exchange losses.

BellSouth Latin America Group Wireless Customer Growth



BellSouth's proportionate Latin America customers grew by 2.6M over 1Q00, a 51% growth rate

With a focus on attracting quality customers, BellSouth added over 668 thousand proportionate wireless customers during the first quarter. The company's Latin American wireless equity customer base surpassed 7.6 million for a 51% growth rate over last year.

The primary customer growth drivers were:

- Venezuela, which added 184 thousand subscribers to surpass 2.7 million equity customers
- Colombia added more than 170 thousand customers during the quarter
- Brazil which stands at 1.4 million equity customers, a growth rate of 57% over last year, and
- Chile continued strong growth with an 88% increase in customers.

In March the company successfully launched the BellSouth brand name in Colombia, integrating two properties acquired last year to form the first nationwide wireless operator in the country. In the last 3 months alone, BellSouth Colombia grew its subscriber base 30% to reach 737 thousand equity subscribers. Consolidation of the operations has enabled the company to streamline processes and capture cost synergies.

Armed with targeted price plans and new service offerings, such as concierge services, short messaging and WAP-based services, BellSouth's BCP operation in Brazil increased its share of postpaid customers this quarter. Nationwide prepaid roaming, implemented in Brazil in January 2001, drove additional customer growth and bolstered ARPU.

In December 2000 and January 2001, BellSouth's operation in Venezuela won licenses to provide nationwide Wireless Local Loop (WLL) services, and Telcel-BellSouth is now offering basic telephony services throughout Venezuela, without installing local landlines. The company is leveraging its current backbone network to provide voice and high-speed Internet access, providing service to over 3,500 voice customers and 250 Internet customers.

Worldwide Wireless

Lead by E-plus in Germany with a 69% customer growth rate, BellSouth's Europe and other International properties contributed 263 thousand proportionate net adds during the quarter. BellSouth's non-Latin proportionate customer base increased 45% over 1Q00 to 2.7 million.

On a proportionate basis, worldwide wireless customer growth was a robust 48%, demonstrating the increasing demand for wireless services globally. From 1Q00, BellSouth's worldwide wireless total customer base doubled to 42.6 million throughout sixteen countries, with a total population of 537 million.

For the quarter, BellSouth's Domestic and Latin America wireless operations delivered more than two-thirds of the company's normalized consolidated revenue growth.

Additional Details

Domestic Advertising and Publishing
BellSouth's advertising and publishing business grew revenues 23.8% -- driven by a book shift and volume growth in the domestic books. EBITDA grew 44% to $233 million, driving an EBITDA margin of 53.3%.

BellSouth consolidated results
Interest expense increased 37.3% over 1Q00, primarily driven by interest expense related to Cingular but which is offset by interest income booked to the Other Income/Expense line. Adjusting for the higher interest expense related to Cingular, interest expense would have grown 17.6%, driven by debt related to Colombia, and the buyout of our partners in our Carolinas PCS operations.

The effective tax rate for 1Q01 was 36.6%.

BellSouth's capital expenditures for 1Q01 were $1.6 billion, up 5% over 1Q00. First quarter was a ramp-up due to heavier spending on DSL and long distance entry. Total cumulative costs related to long distance entry are in the $1.0 -- $1.5 billion range. Capital expenditure guidance for 2001 is in the range of $5.5 -- $6.0 billion, excluding the impact of Cingular Wireless.

BellSouth's level of investment in its networks has remained fairly stable and consistent over time, allowing BellSouth to lead the industry in broadband deployment, with 95% of the customers in our top metros within 12,000 feet of a fiber connection. The company's success in managing its network is clear – today BellSouth has over 520 broadband switches, over 17,000 SONET rings, and 3.5 million miles of fiber deployed in its network.

Long distance entry update
During the quarter, BellSouth passed a major long distance milestone in Georgia when KPMG delivered its final report to the Georgia PSC. After evaluating over 1,170 criteria in testing BellSouth's OSS, the independent firm told the PSC that BellSouth satisfied over 96% of the sample criteria, and with actual orders from CLECs flowing through at an even better rate than the samples. The same OSS systems support local competition across BellSouth's nine-state region. BellSouth expects to file a notification with the Georgia PSC in late May and with the FCC in July.

In addition, on April 12, BellSouth asked the North Carolina Utilities Commission to concur that the company is ready to provide long distance service. After gaining the Commission's endorsement, BellSouth will then seek permission from the FCC to enter the long distance market in North Carolina. Commission action is expected this summer.

OSS testing continues in Florida with a filing expected with the PSC in May and a state decision expected in December, followed by an FCC filing in late December or January.

2001 Guidance
BellSouth is reaffirming its previous guidance for certain key financial and business metrics in 2001 as follows:

- EPS growth in the 7% - 9% range
- Total operating revenue growth (including Cingular) of 9% - 11%
- Data revenue growth of approximately 30%
- DSL high-speed Internet customers of 600,000 at 12/31/01
- Capital expenditures of $5.5 - $6.0 billion

This document contains forward-looking statements, and actual results may vary significantly depending on factual developments, including whether our assumptions materialize. We refer you to our form 10-K, 10-Qs, and 8-Ks that we have filed with the SEC, which discuss factors that may cause actual results to differ materially from those forecast. The forward-looking information in this document is given as of this date only, and BellSouth assumes no duty to update this information.

REQUEST: Please provide the total amount of expense BellSouth booked for conditioning activities (i.e., removing load coils, removing bridged tap or removing repeaters and/or other devices disruptive to digital services) in 1998, 1999, and year to date 2000.

RESPONSE: BellSouth does not maintain its accounting records in a manner which would permit it to provide the detailed information sought by this request. While BellSouth records the dollars (whether capital or expense) associated with an outside plant construction job, a job often includes many tasks and determining the cost incurred by the actual "conditioning" may not be separable from other tasks. Also, even the identification of those jobs that included the removal of some portion of the plant, is dependent on the verbiage the engineer stated in the title of the job and therefore capturing all the relevant jobs would be unlikely.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE: Petition for Arbitration of DIECA Communications, Inc. d/b/a Covad Communications Company for Arbitration of Certain Terms and Conditions Of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996	)	Docket No. 00-01130

DIRECT TESTIMONY OF WILLIAM SEEGER AND MIKE ZULEVIC

ON BEHALF OF

COVAD COMMUNICATIONS COMPANY

JULY 20, 2001

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Communications Company

Q. Mr. Seeger, please state your name and tell us by whom you are employed.

A. My name is William Seeger and I am employed as a Program Manager in the Network Deployment group at Covad Communications Company ("Covad"). My business address is 108 Crosswinds Drive, West Palm Beach, Florida 33413.

Q. Please describe your responsibilities since you have been employed by Covad?

A. I have been with Covad since September 1998. I was initially hired as an Installation Supervisor in the New York Metropolitan Region. In that role, I was responsible for installation, dispatch and repair of xDSL lines. I also worked with Covad's ILEC resolution (now Service Delivery) group on missed loop delivery and vendor meets. In addition, I worked with Covad's Network Deployment group to accept space from Bell Atlantic (Verizon) in the Long Island area.

In March of 1999, I moved to the BellSouth Region as Operations Manager for the Miami, Atlanta and Raleigh Metropolitan Statistical Areas ("MSA"), with responsibility for managing the installation and repair of Covad's xDSL loops in those areas. In that role, I also had responsibility for managing transmission, including DS1 and DS3 loops, that Covad uses for long haul traffic. In this capacity, I worked extensively and directly with BellSouth personnel on access to central office issues, delivery of circuits, and troubleshooting. I acted as the main point of contact for Covad technicians on trouble tickets and when Covad's technicians and BellSouth's technicians met on "vendor meets" to jointly resolve problems on loops.

In April 2000, I moved from Operations to my current position as a Program Manager in Network Deployment, responsible for central office space acceptance, ordering, and applications from ILECS (BellSouth, GTE/Verizon, and Sprint) in the

Southern region, which includes the states of Georgia, Florida, North Carolina, South Carolina, Tennessee, Kentucky and Louisiana.

Q. Briefly describe your professional and educational background.

A. Prior to joining Covad, I was employed by NY Telephone/ NYNEX/ Bell Atlantic for over 30 years. I started my career with New York Telephone in 1965 as a Frame Technician and moved to Switching in 1969, working in XB1 & 5 plus T and N carrier. I continued in this capacity until 1988 when I moved to Installation/Repair working as a Service Technician responsible for installation and maintenance of communications services to homes and business. In 1993, I became part of a self-managed group and handled ISDN plus fiber and SLC systems in remote terminals. During my time at New York Telephone/ NYNEX/ Bell Atlantic, I was also a Communications Workers of America ("CWA") shop steward for over 20 years. As a result of these experiences, I am very familiar with Bell System practices and procedures.

Q. Mr. Zulevic, please state your name and tell us by whom you are employed?

A. My name is Michael Zulevic. I am the Director of Network Deployment – Special Initiatives for Covad. My business address is 13769 N. Slazenger Drive, Oro Valley, Arizona 85737.

Q. Mr. Zulevic, please briefly describe your qualifications and experience as they relate to this proceeding.

A. As Director of Network Deployment – Special Initiatives for Covad, I am responsible for architecture negotiation and the deployment of Covad's national line-sharing network, as well as several other major network initiatives. I have testified in line-sharing

arbitrations and/or cost proceedings in California, North Carolina, Texas, Kansas, Illinois, Pennsylvania and Minnesota.

Prior to joining Covad, I was employed by US West for 30 years, most recently as Manager, Depreciation and Analysis. Prior to that, I worked in Network and Technology Services, providing technical support to US West Interconnection Negotiation and Implementation Teams. While working in these two capacities, I provided testimony on technical issues in support of arbitration cases and/or cost dockets in Minnesota, Iowa, Montana, Washington, Oregon, Arizona, New Mexico, Nebraska, Utah, Wyoming, and Idaho. Prior to this assignment, I was responsible for providing technical support for the US West capital recovery program in the areas of switching, transport, and loop. I also worked as a Central Office Technician and Central Office Supervisor at US West.

My other experiences include the following: Switch and Transport Fundamental Planning Engineer, where I represented Fundamental Planning as a member of the ONA/Collocation Technical Team; Circuit Administration Trunk Engineer, specializing in switched access services; and Custom Network Design and Implementation Engineer working with the design and implementation of private networks for major customers.

Q. What is the purpose of your testimony?

A. The purpose of our testimony is to provide some insight from an operational perspective on issues 5(a), 5(b), 5(c), 7(a), 8, 16, 18, 23, 25, 26, and 31. The terms and conditions we address will have a critical effect on Covad's ability to succeed in the Tennessee market. Covad proposed a number of reasonable improvements to the standard BellSouth Interconnection Agreement that address Covad's unique needs regarding xDSL

provisioning. Nonetheless, many of these proposals were rejected by BellSouth. As a result, Covad has been forced to arbitrate these disputes.

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

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

Q. Mr. Seeger, what were BellSouth's promised loop delivery intervals when you acted as Operations Manager for Covad?

A. That's the difficult part. There were none. Covad's first Interconnection Agreement with BellSouth, signed in 1998, did not specify the contract loop delivery intervals. Instead, BellSouth lists "target" intervals in a separate Product and Services Interval Guide. Because these intervals were not in our Interconnection Agreement, BellSouth was free to change the loop delivery intervals at its whim.

Q. To your knowledge, did BellSouth alter its loop delivery intervals in any way in 2000?

A. Yes. In July 2000, BellSouth extended its loop delivery interval for ISDN loops from 7 to 12 business days. Covad uses this ISDN loop for its ISDN Digital Subscriber Line ("IDSL") service. BellSouth said it was making this change so that the target interval in its Product and Services Guide would more accurately reflect customer experience. In other words, BellSouth would make no effort to improve its service. Rather, BellSouth just wanted to make sure that the numbers matched.

Q. Why are loop delivery intervals important to Covad?

A. From an operations perspective, intervals remain critical to ensuring constant service quality and to driving improvement in provisioning techniques. Without firm, established loop delivery intervals, Covad's personnel have no way to persuade BellSouth to improve its processes or even to speed up the delivery of a single loop.

By having a firm loop delivery interval in our contract, everyone at Covad and at BellSouth will know what is expected. That way, we can work together to deliver loops in the reasonable intervals Covad proposes.

Q. What loop delivery intervals does Covad propose?

A. Covad proposes that BellSouth deliver ADSL, HDSL, UCL and UDC/IDSL loops within 3 business days. For loops that require conditioning, Covad proposes that the loops be delivered within 5 days.

Q. In your experience, are these intervals achievable?

A. Yes. In my time at Bell Atlantic, I was responsible for installing, repairing and following up on the status of "held for cable" (facilities issues) on exactly the types of loops that Covad orders from BellSouth. I also worked specifically with ISDN loops over fiber, so I know how long it really takes to provision these loops. Well-trained technicians can perform all the provisioning activities necessary for xDSL loops in three (3) days. Remember, provisioning an xDSL loop is exactly like provisioning a plain copper voice loop. The central office technicians run simple cross connections in the central office and, when a dispatch is required, the installation and maintenance technicians perform rudimentary cross connection work in the field.

Moreover, when Covad experienced problems with BellSouth provisioning ISDN loops for Covad's IDSL service, I personally worked extensively with BellSouth to help

train their technicians. We've gone to a lot of trouble to help BellSouth develop methods and procedures for provisioning these loops, just to insure that Covad could get timely loop delivery. All of that information is now in BellSouth's hands and it has been for over a year. That is more than adequate time to train its personnel to deliver functional loops in a timely manner.

Q. When you worked for Bell Atlantic, were there set loop delivery intervals which technicians had to meet?

A. Yes. In fact, set loop delivery intervals are invaluable to driving improvement in work steps and processes internally at an incumbent carrier. Additionally, a firm and established delivery interval allows all parties to know what they are working toward and what is expected.

Q. Do you believe that extra time is required for physical cross connections rather than software translations?

A. No. I worked in the central office environment for many years. The physical cross connection takes a few minutes, 10 minutes at the very most. A cross connection consists of running a wire from the Covad OVC/DS0 block on the mainframe to the associated pair and cable. The longest connection in BellSouth's territory is approximately 100 feet. On the average, the longest connection is approximately 30 feet. The physical act of wiring is not a time consuming process. A BellSouth technician would then have to update COSMOS. That would take another few minutes, at the most. A BellSouth central office technician making a cross connection to Covad's equipment should not add days to the loop delivery interval.

Q. BellSouth might argue that provisioning an IDSL-compatible loop should take 10 business days? What are your thoughts?

A. I disagree. These loops require a specialized line card and must be provided on certain slots in the DLC. I have personally installed cards in Covad DSLAMS. This process requires no more than 10 minutes in the central office and one hour maximum in the remote terminal. When I worked as a NYNEX technician, I installed SLC 96 (a type of digital loop carrier system) cards in both central offices and remote terminals and this is not a time consuming process. It entails simply putting a line card in a specific slot on the DLC unit. The necessary work does not justify adding four business days to the interval.

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?

Q. Can conditioning work be performed in 5 business days, as advocated by Covad?

A. Yes. I've personally conditioned and overseen the conditioning of thousands of loops. This is typical, everyday maintenance work done by incumbent carriers. Five business days is ample time to conduct this work.

Q. In the Florida arbitration, BellSouth suggested that conditioning a loop takes between 10 to 30 days, pending on the facility. Do you agree?

A. No. The first thing a BellSouth technician should do when it is determined that the requested loop needs conditioning is to look for a clean loop. While working for NYNEX, when I installed ISDN lines (which also required clean loops), and no clean facilities were available, I would make an attempt to find clean facilities by going into the

closest terminal, identify other working numbers in those terminals, check to see if any were clean, and then attempt to do a line station transfer, thus freeing up a clean pair.

If conditioning is required, that work is routine and can easily be accomplished in five days. As for deconditioning aerial facilities, when I was a repair technician at NYNEX, I removed multiple cross connections and multiple drop wires (i.e., bridged tap). The process took approximately 2 hours from start to finish. The physical act of deconditioning is performed during the technician's daily workload. If you add a day for plant engineering to determine how many load coils are involved and where they are (although the task would never take even close to 8 hours), and another day to schedule it into the technician's work load, it would still take only 3 days to condition a loop. Therefore, Covad's proposed 5 day interval is more than adequate time. As for buried plant and underground plant, the actual point of where the bridged tap or load coil would be "buried" would not be placed where they need more than a few days to access it. As for underground plant, in the Florida arbitration, BellSouth proposed 30 days for deconditioning. That is totally unreasonable. I cannot imagine the work would ever take more than part of a single day. Even with engineering and scheduling, 30 days to accomplish this is excessive.

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?

Q. In the Florida arbitration, BellSouth suggested that BellSouth should charge Covad for time and materials to do Joint Acceptance Testing. Do you agree?

A. No. When I managed field service technicians for Covad in Florida, many times my technicians were forced to call BellSouth to open a trouble ticket because the loop was not tagged, was defective, had excessive metallic noise (meaning there was a short or ground on the line) and lack of connectivity. Nonetheless, BellSouth dropped those loops as "good." Therefore, Joint Acceptance Testing of all loops is crucial. Joint Acceptance Testing ensures that loops that are not functioning properly get fixed during the provisioning process, rather than requiring resolution of problems in the repair and maintenance process, which could add many more days to provision a working loop to the customer. In theory, BellSouth tests their own loops with a CAT access terminal which gives them a read out on the line. Therefore, if BellSouth does it for their own customers, they should also do the same for Covad. Joint Acceptance Testing should not cost additional time and materials as it's a simple task which consists of the BellSouth technician calling Covad and Covad running the loop test while the BellSouth technician is still at the network interface device ("NID").

The bottom line is that my experience with BellSouth has shown that we need a joint process to deliver loops on the BellSouth side and to accept them on the Covad side to ensure they are working when delivered.

Issue 8: When Covad reports a trouble on a loop where, after BellSouth dispatches a technician to fix the trouble, no trouble is found, should Covad pay for BellSouth's cost of the dispatch and testing?

Q. Explain this issue.

A. Covad wants to be credited for trouble tickets BellSouth closes because it reports "no trouble found" -- when BellSouth later does find and acknowledges a problem with their loop.

Q. Why is this issue important to Covad?

A. Several reasons. First, when Covad reports a trouble on a circuit, that means that a Covad customer's DSL line is not working. As a young company, we are working hard to generate high customer satisfaction and good will. Therefore, we need to resolve trouble situations as quickly as possible. To do so, Covad first conducts a series of tests through its equipment to determine where the trouble lies. Once Covad identifies that the problem is in the BellSouth loop, Covad opens a trouble ticket with BellSouth.

On repairs, BellSouth charges Covad each time it opens a trouble ticket and reports that "no trouble is found." That means BellSouth technicians, either in the UNE Center or in the field, have closed the trouble ticket and have not identified a problem. There are numerous instances in which Covad has opened 2, 3 or more trouble tickets on a single loop, only to have those trouble tickets closed by BellSouth without repairing the problem. To add insult to injury, Covad is then charged for those trouble tickets.

Covad has identified these instances because many times Covad requests a "vendor meet" with BellSouth where BellSouth and Covad technicians actually meet and try to resolve problems. With Covad technicians present, BellSouth routinely admits that it failed to check the cross box connections on earlier trouble tickets or otherwise failed to attempt to repair the loop. That means BellSouth erroneously closed the trouble ticket, reporting "no trouble found." Later, when BellSouth checked the loop as it is supposed to do, BellSouth found the problem.

What Covad proposes is simple. When BellSouth identifies and resolves a trouble ticket with Covad, Covad will not have to pay for any trouble tickets on that same loop that were closed because "no trouble was found." That way, BellSouth has an incentive to identify and resolve trouble tickets the first time. Also, this ensures that Covad is not penalized for BellSouth's failure to identify and resolve problems in a timely fashion.

Remember, the entire time BellSouth is erroneously closing trouble tickets, Covad's customer is without DSL service.

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

Q. How can line sharing most efficiently be accomplished in those scenarios?

A. The most efficient network configuration and practices would locate the splitter on a main distribution frame where the local loop enters the central office. In the case of the COSMIC frame, the splitter should be placed as close as possible to the frame on the IDF unless the splitter cross-connect capability has been incorporated into the COSMIC frame modules, as discussed earlier in our testimony. Again, if this is done, the IDF would not be required. In such a configuration, either BellSouth or the CLEC could own the splitter. In fact, during collaborative meetings with BellSouth on line sharing, BellSouth representatives indicated that they were working toward the goal of placing the splitter cross-connect capability on the frame to simplify line sharing.

Q. What type of equipment is necessary to accomplish line sharing as you've described.

A: There is at least one model of splitter that is designed to be mounted on the frame. In fact, the frame-mounted splitter is manufactured by Siecor, the same company that manufacturers the splitters used by BellSouth, US West, and other ILECs for line sharing.

This configuration uses several fewer tie cables than when the splitter is placed anywhere other than the MDF or nearby, in the COSMIC frame situation. As I noted before, this splitter on the frame arrangement makes the most efficient use of existing central office space. If BellSouth chooses to purchase other types of splitters that cannot be mounted on the frame, BellSouth is rejecting the most efficient process for provisioning line sharing.

Q. How does placing the splitter anywhere other than the MDF or nearby the MDF effect line sharing?

A. It has two major and very detrimental effects. First, each time BellSouth moves the splitter away from the MDF, it requires more tie cable to be placed which adds to the cost of splitter placement. The further away from the MDF, the longer the tie cables must be and therefore the more expensive the tie cables are for the CLEC. Moreover, with some ILEC proposed line-sharing configurations, additional cross connects are also added. CLECs are required to pay for these additional features as well, even though they would not chose a configuration that requires unnecessary cross connections. Those costs add exponentially to the overall cost of line sharing and they diminish the benefits of the very low cost method of providing DSL service. BellSouth apparently assumes there will be at least 3 tie cables of 150 feet each. This is much more cable that would be necessary if the splitter were placed on or near the MDF.

Second, the length of the tie cable must be added on to the total length of the DSL loop. Since most CLEC technology to provide ADSL is limited to about 18,000 feet and the length of the loop affects the speed of service provided, a long tie cable inside the central office restricts the service a CLEC can provide to its customers. For example, if

BellSouth places the splitter on an entirely differently floor from the MDF, it could easily require one thousand feet of tie cable. This means that a DSL provider could only service customers 17,000 feet or less from the central office. Since DSL providers want to deliver DSL to the maximum number of consumers possible with current technology, BellSouth's chosen configuration would, in that case, prohibit them from doing so.

Q. From your experience with BellSouth, do you have any additional concerns related to the current placement of the BellSouth owned splitter in the central office?

A. BellSouth has chosen to add a test jack panel to the splitter shelves deployed in their central offices. This test jack has limited test capability and adds cost and potential failure points to the shared circuit. It also adds a significant amount of tie cable cost and length as the splitters are placed in the collocation area but are cabled back to the MDF for cross-connection to the competitors service. These costs are hidden in the BellSouth nonrecurring charges.

Q. Is there any technical reason BellSouth cannot place the splitter on the MDF or within 25 feet of an MDF?

A. No. BellSouth has argued in the past that it cannot place the splitter and the bantam test jack on the frame. The bantam test jack is an invention of BellSouth and it is not used by any other ILECs. As I discuss further below, Covad has not need for or use of the bantam test jack. Therefore, that should not be used as an excuse for putting the splitter in an inefficient location.

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

Q. How long does it take to perform the physical work necessary for provisioning a line-shared loop?

A. If the splitter is properly installed, the only physical work required for the provisioning of a line shared loop is performing a very few cross connections in the central office. This process should easily be accomplished in less than 10 minutes. No additional time or work is necessary. Line sharing does not require any work to be performed outside of the central office and the existing customer telephone number and cable pair are both reused.

Q. How long, then, should it take BellSouth in Tennessee to fill a loop order for line sharing?

A. It should take BellSouth no more than 24 hours for a loop that does not require deconditioning. Given that the physical process required to provision the loop takes only 10 minutes, then there is no reason for BellSouth to require more than 24 hours to complete that process. Today, BellSouth acknowledges that it is obligated to provision a loop within 3 days after the FOC. BellSouth's witness in Florida testified that BellSouth was meeting that interval. That being the case, BellSouth should be ready to push itself toward even more efficient provisioning. Covad proposes a "step-down" process to drive the final interval to 24 hours within 90 days of the hearing in this docket. Under this proposal, BellSouth would provision loops within, first, 3 days for a month following the final order in this docket, then within 2 days for a month following the final order in this docket, and then within 24 hours 90 days after the final order in this docket. Remember, BellSouth already claims to be delivering a line shared loop in 3 days. BellSouth itself admits that in the worst case scenario the provisioning work takes only 36 minutes. (See Exhibit 1) Thus, Covad's proposal is a reasonable way to drive process improvements.

Q. Have any other states adopted this phased-in approach to the provisioning intervals for the high-bandwidth portion of the loop?

A. Yes. The Illinois Commerce Commission recognized that, given the very limited work required to provision a line-shared line for DSL, a phased-in approach to line sharing intervals was fair. These intervals give the ILEC the proper incentives to drive process improvements that facilitate rapid expansion of Line Sharing.

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

Q. Why is data continuity testing important?

A. Several reasons. First, throughout the country Covad has experience many problems with line shared loops. The main problem by far is the ILECs' failure to properly perform the cross connection work in the central office. Data continuity testing will ensure that this work is done before the loop is turned over to Covad as delivered. Moreover, if the Sunset test set is good enough to get BellSouth's 303,000 line share loops up and working, its good enough for Covad's. We need BellSouth to work cooperatively with us to gets these line working, not draw arbitrary lines and what testing it will and will not do.

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

Q. Should BellSouth be required to provide competitors access to the shared physical loop for testing purposes?

A. Yes. It is essential that the Authority require BellSouth to provide competitors access to the shared physical loop for testing purposes. Where a competitor owns the splitter and

installs it in its collocation arrangement, clearly the competitor is entitled to unencumbered access to that splitter to perform any necessary testing. However, competitors must have direct, physical access to *any* loop containing a high-bandwidth network element at the point where the combined voice and data loop leaves the central office for purposes of conducting testing associated with maintenance and repair. In order to have such access, competitors must be able to attach test equipment to the line-shared loop's termination on BellSouth's MDF.

BellSouth has agreed in its Line Sharing Interconnection Agreements with Covad to give test access only to the splitters themselves. Covad needs direct physical access to the loop at all cross-connect points of the splitter at the MDF or the IDF for testing its data services. This level of access is required so that CLECs can isolate troubles on the loop to identify what elements of the DSL or voice network, if any, need repair. With test access at this point, CLECs would be able to insure that they are working on the correct customer's line by using the automatic number identification ("ANI") feature. The CLEC would also be able to verify that the proper cross connect has been made for the customer's service. ILECs utilize this same test access to isolate trouble for their own customers. CLECs should be afforded the same opportunity to test for their customers.

Just as BellSouth must occasionally open the line to the customer to perform trouble isolation, this same capability must be available to CLECs to isolate data troubles for the same customer. BellSouth must realize that we are not only sharing a line, but we are also sharing a customer. CLECs such as the Data Coalition have an interest in retaining and maintaining the quality of their data service that is equal to the CLECs' interest in their voice services. The Data Coalition members also have a strong interest in

maintaining the quality of the voice service. A new customer whose voice service becomes degraded or otherwise impaired, will soon be looking for another data provider.

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 CLEC on the waiting list to give that CLEC 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?

Q. Please describe why this issue is important to Covad.

A Covad is attempting to get BellSouth to act as a reasonable landlord would act. When Covad elects to exit its collocation space, for whatever reason, there is an opportunity for another CLEC to take over that space in a very short interval and at very low costs. Essentially, Covad has already paid for the racking and other space preparation necessary to support CLEC facilities. BellSouth's contract proposal would require Covad to remove all its equipment from the central office, including bays, racking -- everything. That means that if BellSouth put Covad in the very end of a huge unprepared space, Covad would have to remove racking for that entire space. This could be quite expensive for Covad. Additionally, it seems incredibly wasteful to tear down essential racking or bays that another CLEC may want to use.

Covad merely wants to retain the right to find another CLEC interested in acquiring the space from Covad. That way Covad could negotiate privately with the other CLECs to sell its equipment and could be relieved of the obligation to restore the space to its original condition. Despite what BellSouth said in its response to Covad's petition, Covad does not want (and would not ask) BellSouth to broker its equipment.

Nonetheless, BellSouth is the only party that has information about CLECs seeking entrance to a particular central office. Thus, Covad asks that BellSouth send a simple email to CLECs on the waiting list, asking them to contact Covad about acquiring Covad's space. Then, BellSouth will be out of the transaction altogether.

Just like a normal landlord is interested in filling empty apartments, BellSouth could facilitate the transfer of space from one CLEC to another through this simple procedure. This would save Covad and other CLECs money and would eliminate wasteful removal of equipment that another CLEC will simply have to reinstall.

Issue 26: Should the demarcation point of Covad's collocation space be changed from the point-of-termination bay, as currently provided in the agreement, to BellSouth's distribution frame?

Q. Is designation of the demarcation point important?

A. Yes. In a physical collocation arrangement, designation of the demarcation point is absolutely critical to ensuring that parties undertake proper installation, maintenance and repair activities and costs. In general, each party is responsible for installation, maintenance and repair of the network and facilities on that party's "side" of the demarcation point.

The current Interconnection Agreement between Covad and BellSouth provides, that a "point-of-termination bay(s) will designate the point(s) of interconnection" between Covad's equipment and network and BellSouth's network. The point-of-termination bay is generally located near Covad's collocation space, in a common area. Covad prefers this arrangement because it has ready access to this point-of-termination

bay. As a result, installation, maintenance and repair of equipment and facilities on Covad's "side" of the bay is relatively cost-effective. Covad has proposed that this existing language be retained in the new Agreement.

Q. Has BellSouth proposed to change the demarcation point?

A. Yes. BellSouth wants to change the demarcation point to its "conventional" distribution frame. The distribution frame may be located relatively far from Covad's collocation space -- even a different floor or on the other side of the building. If adopted, Covad would become responsible for *all* cabling and cable extensions from the distribution frame to its collocation space.

Q. Do you think BellSouth's proposal is fair?

A. No. BellSouth's proposal is anticompetitive for several reasons. First, the proposal would increase Covad's collocation costs. Second, it would allow BellSouth to take the full amount of time allocated for space preparation based on the prior contract's demarcation point, while performing only a much smaller fraction of the work to provide space. Ultimately, shifting this work to Covad will delay collocation efforts. Third, the proposal would essentially strand Covad's existing investment in point-of-termination bays in Georgia. For example, if Covad needs to add to its existing facilities, we would now have to ignore our POTS bay and Covad would have to cable directly to the MDF, thus creating two demarcation points in each central office. This means extra cost, more work, and not having the same ability as a POTS bay to do testing

Q. Can you provide an example that further demonstrates your concern?

A. Yes. Currently, BellSouth requires Covad to provide and install power cable from our collocation space to the Power Distribution Cabinet ("BDFB") within the BellSouth

central office. BellSouth is the only ILEC in the country with this requirement. The BDFB has been declared the demarcation point by BellSouth. This requirement has added significant cost and time to Covad's deployment. Should a problem arise requiring Covad to access the BDFB, Covad must first request such access in advance, arrange for a BellSouth approved vendor to participate and may also be subject to escort fees. Fortunately, problems requiring access to the BDFB do not arise too often, but we cannot allow this to happen in the case of other cabling. In negotiations, BellSouth has finally agreed that it will place and maintain power cable from the BDFB to the collocation area, as they are currently required to do for transmission cable. It only makes sense that each carrier should have the responsibility for, and the ability to install and maintain all network elements within the work space under their control.

Q. Has BellSouth stated any legitimate concerns regarding problems of where the demarcation point is located?

A. BellSouth has provided Covad no legitimate argument that the existing demarcation point presents any problem for BellSouth or Covad. As a result, Covad can only assume that BellSouth's "business decision" to change the demarcation point is motivated by BellSouth's desire to increase Covad's costs. Most importantly, by changing the demarcation point BellSouth seeks to make routine maintenance and other work at the demarcation more cumbersome and inefficient. From Covad's perspective, given the way the network is currently deployed, a POT bay in or near its collocation space provides the best point of demarcation.

Issue 31: Should BellSouth resolve all loop "facilities" issues within thirty days of receiving a complete and correct local service request from Covad?

Q. What does Covad propose with respect to resolving facilities issues?

A. Covad's proposal is simple. BellSouth should be required to resolve loop facilities issues within 30 days. Covad needs a firm time interval for resolution of these issues so that Covad personnel can follow up with BellSouth to ensure that loop orders do not drop off into the black hole known as "pending facilities."

When BellSouth encounters a facility issue with a Covad loop order, BellSouth informs Covad that the order is "pending facilities." That could mean many things: (1) there is no copper to that particular area; (2) there is a problem with the cable somewhere; or (3) a variety of other issues. I personally have seen orders fall into that black hole, and remain there for months. No one at BellSouth seems to be accountable for attempting to resolve these issues in a timely manner. Establishing the 30-day interval Covad proposes will do exactly that.

Q: What does Covad propose?

A. Covad originally proposed that all facilities issues should be resolved in 30 days. In an attempt to compromise, Covad now proposes the following:

> BellSouth shall resolved pending facilities issues in the following intervals: For bad/nonfunctional pairs, BellSouth shall resolve the issue within 7 business days; For facilities problems that require new construction, BellSouth shall resolve the issue within 30 business days; for all other types of facilities problems, BellSouth shall resolve them in the same amount of time that BellSouth resolves similar problems on its retail POTS lines. If BellSouth cannot meet these intervals, BellSouth shall notify Covad and provide an explanation for why the interval cannot be met and will further provide a estimated completion date for the loop.

Q. In your experience is this achievable for BellSouth?

A. Absolutely.

Q. Why does Covad need a set interval?

A. This is a reasonable amount of time. BellSouth proposes that it will treat Covad facilities

issues in the same time frame as it resolves its own. The problem is that no one knows how long it takes BellSouth to resolve its own facilities problems. It is extremely difficult to build a business and to deliver customer satisfaction with uncertain time frames like BellSouth proposes. A set facilities resolution interval benefits everyone by ensuring that both Covad and BellSouth understand what is expected.

Q. BellSouth may assert that it is not reasonable to place an arbitrary, artificial time limit on when facilities issues can be resolved. Do you agree?

A. No. Covad is not requesting an arbitrary time limit to resolve facilities issues. We believe that 30 days is more than reasonable.

Covad has placed hundreds of orders with BellSouth that were held "pending facilities." Because there is no deadline to fill these orders, many linger for days or even months before either Covad or the customer cancels them. All we are trying to do is to get BellSouth to focus on resolving these issues in a timely way. Without a clear cut interval, BellSouth will never resolve the problems in a way that enables Covad to deliver customer satisfaction.

The first thing a BellSouth technician should do when encountering a facilities issue is to check the local terminal for spare facilities. For an underground facility, the technician should check 10 pairs in each direction from the facility in question. As a NYNEX technician, Mr. Seeger usually worked in the same area and over time became quite familiar with facilities in the cross box and the BellSouth technicians should be the same. Therefore, it is not unreasonable to test multiple pairs to see if anything looks good. The second step, if there are no pairs available, would be to attempt to perform a line station transfer. Even if the BellSouth technician were to go that route, it certainly

would not take 30 days. In other cases, there may be no clean facilities in the terminal or no facilities at all. In any of these situations, BellSouth should be able to resolve the problem in 30 days. Covad has discussed with BellSouth setting specific intervals based on the specific type of facility problem, but the parties have not yet reached agreement on this issue.

Q. Does that conclude your testimony?

A. Yes.

Exhibit to Seeger/Zulevic Testimony

BELLSOUTH

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October 16, 2000

received
10/17/00
in TN
mail

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

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 the non-proprietary portions of BellSouth's Response to Covad's First Interrogatories and First Request for Production of Documents. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

232317

REQUEST: Please identify the amount of time BellSouth believes it will take to do the central office work related to provisioning a line shared loop.

RESPONSE:

There are three possible FRAME configurations that can occur in the Central Offices that will impact the amount of time.

Configuration 1 is a single Conventional two sided Frame.

Removal of jumper between the Central Office Line Side Switch Port (OE) and the BellSouth (BS) Cable Pair (CP) wiring blocks, approximately 3-4 minutes

Placement of three jumpers between the following wiring blocks:
BS CP and Splitter, approximately 6 minutes
OE and Splitter, approximately 6 minutes
CLEC CP and Splitter, approximately 6 minutes

Total time for configuration is approximately 21-22 minutes.

Configuration 2 is the use of 2 Frames, a Modular Frame with the BS OE and CP terminations, and a Conventional two sided Frame for the Splitter and CLEC Cable Pair terminations.

The Modular Frame may be either a single or multiple line up. Multiple line up requires the use of Tie Pairs (TP) used to connect the BS CP to the OE resulting in the removal of three jumpers. Each jumper requires approximately 2 minutes for removal.
Modular Frame with single line up, removal of one jumper, approximately 2 minutes.
Modular Frame with multiple line ups, removal of 3 jumpers, approximately 6 minutes.

The placement of the following 5 jumpers:
BS CP and TP, approximately 3 minutes
OE and TP, approximately 3 minutes
CLEC CP and Splitter, approximately 6 minutes
TP and Splitter, approximately 6 minutes (OE TP)
TP and Splitter, approximately 6 minutes (BS CP TP)

RESPONSE: (continued)

Total Time for configuration 2 with a single Modular Frame is approximately 26 minutes.
Total Time for configuration 2 with multiple Modular Frames is approximately 30 minutes.

Configuration 3 is the use of three frames, a single or multiple line up Modular Frame with the BS CP and OE terminations, a Conventional two sided Frame for the Splitters, and a second Conventional two sided Frame for the CLEC CP terminations.

Jumper removal:
Modular Frame with single line up, removal of one jumper, approximately 2 minutes.
Modular Frame with multiple line ups, removal of 3 jumpers, approximately 6 minutes.

The placement of the following 6 jumpers:
BS CP and TP, approximately 3 minutes
OE and TP, approximately 3 minutes
CLEC CP and TP, approximately 6 minutes
TP and Splitter, approximately 6 minutes (OE TP)
TP and Splitter, approximately 6 minutes (BS CP TP)
TP and Splitter, approximately 6 minutes (CLEC CP TP)

Total Time for configuration 3 with a single Modular Frame is approximately 32 minutes.
Total Time for configuration 3 with multiple Modular Frames is approximately 36 minutes.