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October 18, 2005

Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: ***In Re: Petition of DIECA Communications, Inc. d/b/a Covad Communications Company, for Arbitration of Interconnection Agreement with BellSouth***
Docket number: 04-00186

In Re: BellSouth's Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law
Docket number: 04-00381

Dear Chairman Jones:

DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") respectfully submits the following reply to BellSouth's letter dated September 30, 2005 in order to respond to several misstatements made by BellSouth. Once again,[1] BellSouth's attorneys have allowed advocacy to outreach accuracy.

First, BellSouth's letter misrepresents the recent decision of the Maine Public Utilities Commission concerning line sharing. As CompSouth noted in its September 26, 2005, filing, the Maine Commission held that Section 271 of the federal Telecommunications Act requires a Bell operating company to offer line sharing. This same issue is now pending before the Authority in each of the above-captioned dockets. BellSouth states that the Maine decision "reveals many points that distinguish the Maine decision from issues before the TRA." But BellSouth lists only one such point, asserting erroneously that the Maine decision "turns on the commitment Verizon made to tariff 271 UNEs in Maine. (Order at 2.)" The Maine decision does not turn on that commitment by Verizon. Addressing both state and federal law, the decision turns on precisely

[1] See BellSouth's "Reply Brief" filed July 14, 2005, in Docket 04-00381, and CompSouth's Response, filed July 21, 2005, noting (at p 2) that BellSouth had intentionally misrepresented the applicable law

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the same question that is now before the Authority: "whether line sharing is required pursuant to Section 271, Checklist Item No. 4 — access to unbundled loops." Order, at 8. The Maine Commission agreed with the CLECS that line sharing is required by Checklist Item No. 4. Order, at 9-12.

BellSouth's letter then makes another misleading assertion: "Also important to note is the Maine PUC's finding that the parties 'do not contest that UNE-Ps are not required under Section 271 because the FCC has found that Section 271 does not require combinations of UNEs.' (Order, at 8.)" By pointing to this "important" finding, BellSouth seems to imply that the Commission's ruling is relevant to an issue pending before the Authority, presumably an issue in Docket 04-00381. BellSouth does not explain the relevance of that finding because, of course, there is no honest explanation. As BellSouth is well aware, the issue in Docket 04-00381 (Issue 14) is about BellSouth's "commingling" obligations, not the FCC's combination rules.

Finally, BellSouth's letter quotes a fragment from one of 473 footnotes in the FCC's 133 page *Report and Order* in WC-Docket 02-33 (the "*Wireline Broadband Order*"[2]) and advanced that fragment (without supplying a copy of the *Report and Order*) as support for BellSouth's claim that it has no § 271 obligation to provide line sharing to Covad. BellSouth claims that since the *Wireline Broadband Order* "made no mention of a Section 271 line sharing arrangement," one must not exist. Again, BellSouth errs; the *Wireline Broadband Order* does not discuss line sharing as a § 271 obligation because the proceeding had nothing to do with either line sharing or § 271. The *Wireline Broadband Order* deals with a completely different issue: whether ILECs should be required to provide DSL transport to ISPs pursuant to tariff. DSL transport is not at issue in Covad's arbitration here and was not part of the *Triennial Review* proceeding discussed in the footnote cited by BellSouth. Thus, the *Wireline Broadband Order*, as well as the earlier *Triennial Review Order* ("*TRO*"), cannot be conflated to boost the proposition BellSouth is trying to support here.

The footnote cited by BellSouth is not only irrelevant but is completely unremarkable to begin with. Footnote 157 merely recites what the FCC did two years ago in the *TRO* when it

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[2] The complete text of the Order is available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-150A1.doc.

affirmed that CLECs have the right to use stand-alone copper loops to provide broadband services. In the *TRO*, the FCC declined to readopt line sharing rules under § 251. As the Authority already knows, Covad is not claiming a right to line sharing under that part of the Act. That the *Wireline Broadband Order* does not discuss line sharing to any significant degree is similarly unremarkable. The *Wireline Broadband Order* relates to the obligations of incumbents generally and, like the *TRO*, has nothing to do with the unique obligations of BellSouth and other BOCs under § 271. The order is simply irrelevant to the line sharing question currently before the Authority.

For the Authority's convenience, here is the complete text of the footnote cited by BellSouth:

> 157. The Commission's *Triennial Review Order* expressly reaffirmed the competitive LECs' right to obtain unbundled access to stand-alone copper loops in order to provide broadband transmission services. *See Triennial Review Order*, 18 FCC Rcd at 17128-32, paras. 248-54. In addition, we reaffirmed the incumbent LECs' obligation to provide competitive LECs with the ability to line split (*i.e.*, where one competitive LEC provides narrowband voice service over the same loop that a second competitive LEC uses to provide DSL service). *Id.* at 17130-31, paras. 251-52. In that order, the Commission also grandfathered existing line sharing customers and declined to reinstate the Commission's vacated line sharing rules. The Commission instead established a three-year transition after which any new customer must be served through a line splitting arrangement, through use of the stand-alone copper loop, or through an arrangement that a competitive LEC has negotiated with the incumbent LEC to replace line sharing. Line sharing allowed a competing carrier to provide DSL service over the high-frequency portion of the same loop that the incumbent LEC uses to provide voice service. *Id.* at 17132-41, paras. 255-69. The D.C. Circuit expressly upheld the Commission's decision not to require line sharing. *USTA II*, 359 F.3d at 585. As we discuss in part VI.D, below, the decisions contained in this Order have no affect on competitive LECs' ability to obtain UNEs, or on the section 251(c) obligations of incumbent LECs.

As is apparent from reading the full text, the footnote has nothing to do with BellSouth's obligations under § 271 and lends no support to BellSouth's arguments regarding line sharing

and should be disregarded. If anything, the lengths to which BellSouth is willing to go in order to try to bolster its arguments only underscore the weakness of the company's position.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry M. Walker

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to:

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