

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 2, 2006

IN RE:

**APPLICATION OF DIECA COMMUNICATIONS, INC.
D/B/A COVAD COMMUNICATIONS COMPANY
FOR AUTHORITY TO PROVIDE SECURITY IN
CONNECTION WITH FINANCING; EXPEDITED
ACTION REQUESTED**

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**DOCKET NO.
06-00088**

ORDER APPROVING FINANCING TRANSACTION

This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on May 15, 2006 for consideration of the *Petition* of DIECA Communications, Inc. d/b/a Covad Communications Company, requesting Authority approval to participate in certain debt and debt-related financing arrangements pursuant to Tenn. Code Ann. § 65-4-109 (2004).

The *Petition*

DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad" or the "Company"), is a Virginia corporation that is a wholly-owned subsidiary of Covad Communications Group, Inc. ("Covad Group"), a Delaware corporation and a publicly-held company. The principal business office of Covad and Covad Group is located in San Jose, California. Covad is a nationwide provider of integrated voice and data communications. The Company offers DSL, VOIP, web hosting, managed security, IP and dial-up, and bundled voice and data services directly through its network and through Internet service providers, value-

added resellers, telecommunications carriers, and affinity groups to small and medium-sized businesses and home users. To provide its services, Covad owns and operates a nationwide broadband network that serves customers in 44 states. In Tennessee, Covad has approximately 3,350 customers, and the company was issued a Certificate of Public Convenience and Necessity (“CCN”) to provide intrastate telecommunications services by Authority Order in Docket No. 99-00823 on May 22, 2000.

On March 29, 2006, Covad notified the Authority of its intent to provide security in connection with new financing arrangements of up to \$200 million being arranged for its parent company, Covad Group (Covad and Covad Group, together the “Borrowers”).¹

Covad proposes that it obtain up to 200 million through one or more financing arrangements with banks, other financial institutions and/or other types of investors (the “Financings”). Current proposed Financings include a \$50 million revolving line of credit from a commercial bank (the “Commercial Bank”), as well as a \$50 million investment from EarthLink in return for \$10 million of Covad Group common stock and a \$40 million senior secured convertible note. The *Petition* indicates that Covad may obtain other Financing in the future. The exact amounts and terms of each Financing, which may be completed in multiple tranches, will not be finalized until the specific arrangement(s) have been completed or shortly before funding of the various transactions, and will reflect the market conditions then existing. Some of the terms, such as interest rate, may fluctuate during the term of the Financing due to changes in market conditions and the financial condition and/or the performance of the Borrowers.

¹ Covad filed this application for approval for its participation in this financing transaction pursuant to Tenn. Code Ann. § 65-4-109. However, Covad asserts that it is doing so without prejudice to its right to assert that this transaction is beyond the jurisdiction of state commissions.

The *Petition* states that the funding providers may be banks, financial institutions, private lending institutions, private individuals, and/or other institutions, acting either individually or as a consortium. The funding group may change over the life of the Financing. Portions of the financed funds may be in the form of conventional credit facilities as revolving credits (which may be reborrowed during the term of the commitment); letters of credit; the issuance of secured or unsecured notes or debentures (including notes convertible into common stock) to banks, other types of financial institutions or other investors; or term loans.

As security for the financing arrangements, the *Petition* asserts that some and perhaps all of the loans to Borrower(s) are expected to be secured by a first ranking interest in specified assets of Covad, including a security interest in its receivables, tangible personal property, and equipment, and intellectual property. In some cases, Covad may provide guarantees or serve as a co-borrower. The security documents will contain appropriate provisions indicating that the exercise of certain rights thereunder may be subject to obtaining prior regulatory approval. At present, it is expected that the Commercial Bank line of credit will be secured by Covad's assets. The EarthLink senior secured convertible note will be secured with a security interest in the telecommunications equipment (and any intellectual property embedded in that equipment) that Covad will purchase with the proceeds from the note.

According to the *Petition*, the proposed financing arrangement will provide Covad with the financial resources needed to further grow and compete in the highly competitive markets for telecommunications services in Tennessee and nationwide. In addition, the financing transaction is not expected to directly affect in any way the rates or services of Covad or its affiliates, or result in any change in control of Covad or its affiliates.

According to the *Petition*, some of the proceeds from the financing arrangement(s) will be used to repay other loans, or for general corporate purposes, capital expenses, and working

capital. Other proceeds will be used to fund the acquisition of other telecommunications companies and/or telecommunications assets.

May 15, 2006 Authority Conference

Tenn. Code Ann. § 65-4-109 (2004) states:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after hearing to approve any such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

At a regularly scheduled Authority Conference held on May 15, 2006, the panel voted unanimously to approve the *Petition* and made the following findings:


1. The proposed transaction is subject to approval pursuant to Tenn. Code Ann. § 65-4-109 (2004);
2. The proposed transaction will affect the assets of entities certificated to offer telecommunications services in Tennessee;
3. The Petitioners have filed similar petitions in other states and asserted that federal approval of this transaction is not necessary;
4. Tennessee has a legitimate interest in monitoring the integrity of the competitive marketplace which includes obtaining information on the financial transactions and fitness of certificated telecommunications carriers;
5. The burden of complying with Tenn. Code Ann. § 65-4-109 (2004) is minimal as such compliance should be perfunctory given the telecommunications industry's movement to a competitive environment;
6. The proposed transaction is being made in accordance with the laws enforceable by the Authority; and


7. The purpose of the transaction is in the public interest because, based on the assertions of the Petitioners, the access to greater financial resources will strengthen the Petitioners' competitive position and allow them to bring competitive services to Tennesseans.

IT IS THEREFORE ORDERED THAT:

1. DIECA Communications, Inc. d/b/a Covad Communications Company is authorized to enter into the financing transaction as described in the *Petition* and discussed herein.

2. The authorization and approval given hereby shall not be used by any party, including, but not limited to, any lending party, for the purpose of inferring an analysis or assessment of the risk involved to a purchaser has been performed. Nothing contained herein creates or is intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee or any political subdivision thereof for the transactions approved herein.


Ron Jones, Chairman


Pat Miller, Director


Sara Kyle, Director