

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	:	
and	:	
Covad Communications Company	:	
	:	08-0518
Joint Petition for Approval of 5 <sup>th</sup>	:	
Amendment to the Interconnection	:	
Agreement dated September 2, 2008,	:	
pursuant to 47 U.S.C. §252.	:	

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On September 3, 2008, pursuant to 83 Illinois Administrative Code Part 763, Illinois Bell Telephone Company (“AT&T Illinois”) and Covad Communications Company (“Covad”), filed a joint petition for approval of the 5<sup>th</sup> Amendment to the Interconnection Agreement dated September 2, 2008 under Section 252 of the Telecommunications Act of 1996 (47 U.S.C. § 252 et seq.) (“the Act”). The 5<sup>th</sup> Amendment to the Agreement was submitted with the petition. A statement in support of the petition was filed along with verifications sworn to by Eddie A. Reed, Jr. on behalf of AT&T Illinois and by Katherine Mudge on behalf of Covad, stating that the facts contained in the petition are true and correct to the best of their knowledge, information, and belief. Pursuant to notice as required by law and the rules and regulations of the Commission, this matter came on for hearing by the duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois, on September 25, 2008. Staff previously filed the Verified Statement of A. Olusanjo Omoniyi of the Commission’s Telecommunications Division on September 16, 2008. At the hearing on September 25, 2008, Covad did not appear on the record but later indicated it had no objection to Verified Statement or the proceedings. AT&T Illinois and Staff appeared and agreed that there were no unresolved issues in this proceeding. Subsequently Mr. Omoniyi’s Verified Statement was admitted into evidence and the record was marked “Heard and Taken.”

II. SECTION 252 OF THE TELECOMMUNICATIONS ACT

Section 252(a)(1) of the Act allows parties to enter into negotiated agreements regarding requests for interconnection services or network elements. AT&T Illinois and Covad have negotiated an Amendment to the Agreement and submitted it for approval in this proceeding.

Section 252(e)(1) of the Act provides, in part, that "[a]ny interconnection agreement adopted by negotiation...shall be submitted for approval to the State Commission." This Section further provides that a State Commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the State Commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity."

Section 252(e)(4) provides that the agreement shall be deemed approved if the State Commission fails to act within 90 days after submission by the parties. This provision further states that "(n)o State court shall have jurisdiction to review the action of a State Commission in approving or rejecting an agreement under this section".

Section 252(e)(5) provides for preemption by the Federal Communications Commission if a State Commission fails to carry out its responsibility, and Section 252(e)(6) provides that any party aggrieved by a State Commission's determination on a negotiated agreement may bring an action in the appropriate Federal District Court.

Section 252(h) requires a State Commission to make a copy of each agreement approved under subsection (e) "available for public inspection and copying within 10 days after the agreement or statement is approved." Section 252(i) requires a local exchange carrier to "make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

### III. THE 5<sup>TH</sup> AMENDMENT TO THE AGREEMENT

The purpose of the 5<sup>th</sup> Amendment to the Agreement is to correct an error in the table for the DS-1 Service Provisioning. The 5<sup>th</sup> Amendment does not modify or extend the Effective Date or Term of the underlying Agreement; rather it is coterminous with the Agreement. Except as modified by the Amendment, all other terms and conditions of the underlying Agreement remain unchanged and in full force and effect.

### IV. POSITIONS OF THE PARTIES

No party contended that the 5<sup>th</sup> Amendment to the Agreement is discriminatory or contrary to the public interest. Staff reviewed the Amendment to the Agreement in the context of the criteria contained in Section 252(e)(2)(A) of the Act and determined that it met the necessary requirements. Under this Section, the Commission may reject an agreement, or any portion thereof, adopted by negotiation under Subsection (a) only if it finds that (i) the agreement, or a portion thereof, discriminates against a telecommunications carrier not a party to the agreement; or (ii) the implementation of

such an agreement, or a portion thereof, is not consistent with the public interest, convenience and necessity.

Mr. Omoniyi stated that the 5<sup>th</sup> Amendment to the Agreement meets the standards set forth in the Telecommunications Act of 1996 and is consistent with the public interest, convenience and necessity. There are no contested issues in this docket. Staff recommended that the Commission approve the 5<sup>th</sup> Amendment to the Agreement for the reasons set forth in the Verified Statement of Mr. Omoniyi. Staff also recommended that the Commission require AT&T Illinois to file with the Office of the Chief Clerk, within five (5) days from the date upon which the 5<sup>th</sup> Amendment is approved, a verified statement that the approved Amendment is the same as the Amendment filed in this Docket with the Verified Petition.

#### V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Illinois Bell Telephone Company and Covad Communications Company are telecommunications carriers as defined in Section 13-202 of the Public Utilities Act;
- (2) Illinois Bell Telephone Company and Covad Communications Company have entered into a 5<sup>th</sup> Amendment to the Interconnection Agreement which has been submitted to the Commission for approval under Section 252(e) of the Telecommunications Act of 1996;
- (3) the Commission has jurisdiction of the parties hereto and the subject matter hereof;
- (4) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) the 5<sup>th</sup> Amendment to the Interconnection Agreement between Illinois Bell Telephone Company and Covad Communications Company does not discriminate against a telecommunications carrier not a party to the Agreement;
- (6) in order to assure that the 5<sup>th</sup> Amendment to the Interconnection Agreement is in the public interest, Illinois Bell Telephone Company should implement the 5<sup>th</sup> Amendment by filing a verified statement with the Chief Clerk of the Commission, within five (5) days of approval by the Commission, that the approved Amendment is the same as the Amendment filed in this docket with the verified petition. The Chief Clerk

shall place the 5<sup>th</sup> Amendment to the Interconnection Agreement on the Commission's website under Interconnection Agreements;

- (7) Illinois Bell Telephone Company should also place replacement sheets in its tariffs at the following location: Ill.C.C. No. 16 Section 18;
- (8) the 5<sup>th</sup> Amendment to the Interconnection Agreement should be approved as hereinafter set forth;
- (9) approval of the 5<sup>th</sup> Amendment to the Interconnection Agreement does not have any precedential effect on any future negotiated agreements or Commission Orders.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the 5<sup>th</sup> Amendment to the Interconnection Agreement dated September 2, 2008 between Illinois Bell Telephone Company and Covad Communications Company is approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Illinois Bell Telephone Company shall comply with findings (6) and (7) of this Order within five days of the date of this Order.

IT IS FURTHER ORDERED that this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 8<sup>th</sup> day of October, 2008.

(SIGNED) CHARLES E. BOX

Chairman