

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**February 29, 2008**

*In re: Petition of DIECA Communications, Inc.* )  
*For Approval to Encumber Utility Property* ) Docket No. 08-00033

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**PETITION OF DIECA COMMUNICATIONS, INC.**  
**FOR APPROVAL TO ENCUMBER UTILITY PROPERTY**

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**INTRODUCTION**

DIECA Communications, Inc. d/b/a Covad Communications Company (“Covad” or “Petitioner”), by its undersigned counsel and pursuant to T.C.A. §65-4-109 and any other regulations deemed applicable, requests approval, to the extent necessary,<sup>1</sup> from the Tennessee Regulatory Authority (“Authority”) to participate in certain financing arrangements whereby Covad Communications Group, Inc. (“CCGI”), the direct parent of Covad, will incur long-term debt obligations consisting of a senior secured first lien term loan facility of up to \$172,500,000 (the “Senior Term Facility”), a senior secured first lien revolving credit facility in an aggregate principal amount of up to \$25,000,000 (the “Senior Revolving Facility” and, together with the Senior Term Facility, the “Senior First Lien Facilities”), and a senior secured second lien term loan facility of up to \$87,500,000 (the “Senior Second Lien Facility”); and to encumber its property through the grant of a security interest in Covad’s assets in support of the financing arrangements, as further described in

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<sup>1</sup> The filing of the Petition does not necessarily imply that Covad agrees that the TRA has jurisdiction over this proposed transaction which affects both intrastate and interstate communications. See, Opinion of the Attorney General, OAG 99-119 (May 14, 1999).

Section III below.<sup>2</sup> For the reasons set forth herein, Covad submits that the proposed financing arrangements are in the public interest. In support of this Petition, Petitioner states:

### **DESCRIPTION OF THE PETITIONER**

#### **DIECA Communications, Inc.**

DIECA Communications, Inc. ("Covad") is a Virginia corporation, with offices located at 110 Rio Robles, San Jose, California, and is a wholly owned subsidiary of Covad Communications Group, Inc. ("CCGI") (AMEX: DVW), a publicly held Delaware company located at the same address. Covad is a leading nationwide provider of integrated voice and data communications. The company offers DSL, Voice Over IP, T1, Web hosting, managed security, IP and dial-up, wireless broadband, and bundled voice and data services directly through Covad's network and through Internet Service Providers, value-added resellers, telecommunications carriers and affinity groups to small and medium-sized businesses and home users. Covad broadband services are currently available across the nation in 44 states and 235 Metropolitan Statistical Areas and can be purchased by more than 57 million homes and businesses, which represent over 50 percent of all US homes and businesses.

In Tennessee, Covad is authorized to provide intrastate telecommunications services pursuant to an order of the Authority issued May 22, 2000, in Docket 99-00823. Covad is also authorized by the Federal Communications Commission ("FCC") to provide international and domestic interstate telecommunications services as a non-dominant carrier.

Further information concerning Covad's legal, technical, managerial and financial qualifications to provide service was submitted with its application for certification with the Authority as noted above and is, therefore, a matter of public record. Covad respectfully requests that the Authority take official notice of that information and incorporate it herein by reference.

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<sup>2</sup> The final amounts of the Senior First Lien Facilities and Senior Second Lien Facility are to be determined based upon market conditions at the time of closing.

## CONTACT INFORMATION

For the purposes of this Petition, contacts for the Petitioner are as follows:

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## REQUEST FOR APPROVAL TO PARTICIPATE IN CERTAIN FINANCING ARRANGEMENTS

Pursuant to an agreement and plan of merger dated October 28, 2007, among CCGI Holding Corporation (“CCGI Holding”), CCGI Merger Corporation (“CCGI Merger”) and CCGI (direct parent of Covad), CCGI Holding intends to acquire all the equity interests of CCGI.<sup>3</sup> CCGI, therefore, is entering into the proposed financing arrangements to fund this strategic acquisition and for other permitted purposes, including providing working capital, financing capital expenditures, refinancing existing indebtedness, and other general corporate purposes. The proposed financing is contingent upon closing the contemplated merger transaction (however, the merger is *not* contingent upon completion of this financing).

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<sup>3</sup> Covad has sought, and received, approval from the Authority for the transfer of control of CCGI (direct parent of Covad) to CCGI Holding Corporation (“CCGI Holding”). See Docket No. 07-00276 (February 19, 2008).

The borrower in the financing arrangements will be CCGI Merger, a Delaware corporation formerly known as Blackberry Merger Corporation, all of the outstanding equity interests of which are owned by CCGI Holding, a Delaware corporation formerly known as Blackberry Holding Corporation, in each case, formed and controlled by Platinum Equity, LLC (“Platinum”).<sup>4</sup> As a result of the above-referenced transfer of control, CCGI Merger will be merged with and into CCGI with CCGI surviving (CCGI is a holding company, and is the direct owner of Covad). Thereafter, upon consummation of the above-referenced transfer of control, CCGI will become the borrower in the proposed financial arrangements (CCGI Merger and CCGI are referenced hereafter as “Borrower”). The proposed financing arrangements will consist of three measures:

- 1) A senior secured first lien term loan facility in an aggregate principal amount to be determined based on market conditions, currently expected to be between \$148,500,000 and \$172,500,000 (the “Term Facility”). The proceeds of the Term Facility will be used by CCGI, on the date of the initial borrowing (the “Closing Date”) (a) to pay the consideration for the transfer of control, (b) to refinance certain existing indebtedness of CCGI and its subsidiaries, and (c) to pay transaction costs.
- 2) A senior secured first lien revolving credit facility in an aggregate principal amount to be determined based on market conditions, currently expected to be between \$20,000,000 and \$25,000,000 (the “Revolving Facility” and, together with the Term Facility, the “Senior First Lien Facilities”), of which an amount to be determined will be available through a sub-facility in the form of letters of credit. The proceeds of loans under the Revolving Facility will be used by CCGI from time to time for general corporate purposes. The letters of credit will be used to support obligations incurred in the ordinary course of business by the Borrower and its subsidiaries.

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<sup>4</sup> Neither CCGI Holding, CCGI Merger, nor Platinum are regulated telecommunications service providers.

- 3) A senior secured second lien term loan facility (the “Senior Second Lien Facility”) in an aggregate principal amount to be determined based on market conditions, currently expected to be between \$76,500,000 and \$87,500,000. The proceeds of the Senior Second Lien Facility will be used by CCGI on the Closing Date to (a) pay the consideration for the transfer of control, (b) refinance existing debt and (c) to pay transaction costs.

The Senior First Lien Facilities and Senior Second Lien Facility will mature on the date that is 364 days after the Closing Date; provided that upon receipt of requisite regulatory approvals the maturity date will be extended to a date which is expected to be on or after the fifth anniversary of the Closing Date for the Senior First Lien Facilities, and the sixth anniversary of the Closing Date for the Senior Second Lien Facility.

All obligations of Borrower under the Senior First Lien Facilities and Senior Second Lien Facility will be guaranteed by CCGI Holding, CCGI, and certain CCGI subsidiaries including Covad, subject to certain exceptions to be determined. The Senior First Lien Facilities and Senior Second Lien Facility will also be secured by substantially all the assets of CCGI Holding, CCGI, and CCGI subsidiaries including Covad, subject to certain exceptions to be determined. (The Senior Second Lien Facility and the Guarantees will be secured on a second-priority basis.)<sup>2</sup> Covad emphasizes that none of the pledging of jurisdictional assets or guarantee obligations described herein will apply to Covad until required regulatory approvals are received.

Covad requests approval to grant security interests in its assets, as described above, to secure these financing arrangements, and any other authority necessary or required for the above-referenced financing arrangements. Further, Covad’s participation in the financing arrangements will not result in a change in Covad’s management or in its day-to-day operations; nor will it adversely affect Covad’s

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<sup>2</sup> The interest rates under the Senior First Lien Facilities and the Senior Second Lien Facilities will be at the option of the Borrower, Adjusted LIBOR or ABR, plus a margin to be determined based on market conditions at the time of closing.

current or proposed operations in Tennessee. Accordingly, and to the extent required, Covad requests that the Authority approve the participation of Covad in financial arrangements as described herein.

### **PUBLIC INTEREST CONSIDERATIONS**

The proposed financing arrangements described herein are consistent with the public interest and will not impair the ability of Covad to perform services to the public. The financing arrangements will enable CCGI Holding to capitalize its acquisition of Covad, thereby allowing Covad to secure the benefits attendant to that acquisition, including operational efficiencies, management expertise, and the ability to bring services to new markets and allow more consumers to benefit from its competitive services more quickly and efficiently. In addition, the financing arrangements will allow CCGI and Covad to extend the maturity of certain indebtedness and reduce existing expenses. Furthermore, the contemplated pledges and guarantees will be entirely transparent to consumers and will not alter the rates, terms and conditions under which Covad provides service in Tennessee. The issuance of the notes will not cause a change in the control of CCGI or Covad.

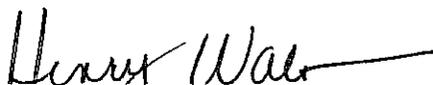
Approval of Covad's participation in the proposed financing arrangements will serve the public interest in promoting competition among telecommunications carriers by providing CCGI (and therefore Covad) with the opportunity to strengthen its financial position. Covad believes that the financial arrangements described herein provide important financial benefits to the company. As a result, the proposed transaction is expected to continue to yield financial benefits that ultimately inure to the benefit of Covad's customers. Furthermore, by increasing the breadth and scope of telecommunications services made available through the Covad's ongoing operations, this financing transaction will ultimately benefit Tennessee consumers. In sum, greater access to capital will strengthen Covad's ability to bring competitive telecommunications services to consumers in Tennessee and is, therefore, in the public interest.

**CONCLUSION**

For the reasons stated above, Covad submits that the public interest, convenience and necessity will be furthered by expeditious Authority approval of Covad's participation in the financing arrangements described herein.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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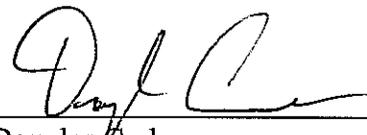
*Attorneys for DIECA Communications, Inc.*

STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

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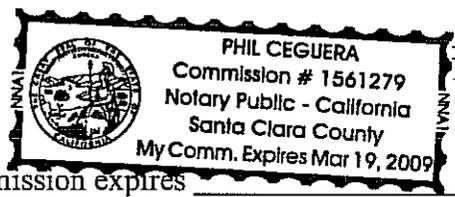
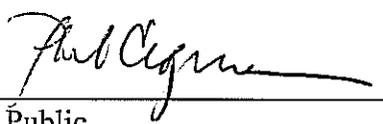
**VERIFICATION**

I, Douglas Carlen, state that I am Senior Vice President and General Counsel of Covad Communications Group, Inc.; that I am authorized to make this Verification on behalf of Covad Communications Group, Inc. and its subsidiary DIECA Communications, Inc.; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.



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Douglas Carlen  
Senior Vice President & General Counsel  
Covad Communications Group, Inc.

Sworn and subscribed before me this 5<sup>th</sup> day of February, 2008.



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Notary Public

My commission expires \_\_\_\_\_