

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Cancellation of the )  
 Registration of DIECA Communications, ) File No. DD-2010-0029  
 Inc., d/b/a Covad Communications Company )  
 to Provide Interconnected Voice Over )  
 Internet Protocol Service. )

**DIECA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY**  
**RESPONSE OPPOSING STAFF'S MOTION TO CANCEL**  
**VoIP REGISTRATION**

COMES NOW DIECA Communications Inc. d/b/a Covad Communications Company (“Covad”) and files this response opposing the Motion to Cancel VoIP Registration (“Motion”) filed by the Staff of the Missouri Public Service Commission (“MPSC Staff”), and for the reasons stated herein, requests that the Motion be withdrawn with prejudice or, in the alternative, denied in its entirety. In support of this request, Covad respectfully states the following:

1. Covad is a nationwide provider of voice and data services to consumers and businesses with a network that spans 44 States. Covad operates in 44 states, in approximately 250 major metropolitan areas, including Missouri. Covad provides broadband or data (*e.g.*, ADSL2+, T-1, Bonded T-1) services and VoIP to residential and small and medium-sized business on a retail basis, and also on a wholesale basis (*e.g.* EarthLink, Sprint, certain ILECs). As part of Covad's business and in order to obtain access to end-users and certain facilities, Covad leases loops and transport from the incumbent local exchange companies ("ILEC"), and uses those leased components in combination with Covad's network to provide competitive services to its customers in Missouri, as well as nationwide.

2. With respect to Missouri, Covad holds a certificate as a competitive provider issued by the Commission on July 26, 1999 in Case No. TA-99-159. As a competitive provider, Covad timely files its Annual Reports, Statements of Revenue, and has complied with the requirements of the Commission as they apply to the services provided by Covad in Missouri. To Covad's knowledge, Covad's certificate remains in good standing with the Commission.

3. In addition, according to Covad's understanding of the mandates of H.B. 1779, Covad timely registered as a VoIP provider and the Commission approved Covad's registration, effective October 2, 2008, in Case No. DA-2009-0074. Since that time, Covad has complied and timely filed all applicable reports, Statements of Revenue, and other information required under the law with respect to Covad's VoIP service. To Covad's knowledge, the registration remains in good standing, until the filing of this Motion.

4. Covad agrees with Staff that Covad is not delinquent in the payment of an annual assessment or the filing of its annual report (both as a competitive provider and a registered VoIP provider).<sup>1</sup>

5. Covad currently provides broadband and/or VoIP services to approximately 5,000 customers in the State of Missouri. Covad is currently collocated in 52 Central Offices ("COs") owned by ILECs in the Missouri. Covad interconnects and obtains access to unbundled network elements and collocation through a Commission-approved interconnection agreement with AT&T Missouri which enable Covad to provide the services listed herein.

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<sup>1</sup> Motion, ¶ 6.

### **Motion Regarding VoIP Registration**

6. Covad continues to provide competitive alternatives for broadband and VoIP services to consumers in the State of Missouri and has neither requested nor sought any changes to its VoIP registration or its competitive provider certificate. For the reasons stated below, Covad strenuously objects to the Motion and the remedies sought therein, as well as, any modification to Covad's competitive provider certificate.

7. During the 3Q 2008, Covad identified a *limited* number of COs nationwide -- specifically 21 out of 2,000 COs in which Covad is currently collocated -- that were sufficiently unprofitable and for which Covad could no longer justify the ILEC and other costs associated with the provision of broadband and/or VoIP services through those COs. Covad reached that decision after careful and thoughtful analysis in an effort to maximize its ability to continue to provide competitive alternative broadband and VoIP services to both retail and wholesale customers in all of its states, recognizing that these 21 COs had been stagnant in growth for some time.

8. In recognition of the requirements of Covad's retail and wholesale contracts, as well as of the Federal Communications Commission ("FCC"), Covad initiated notice to its retail customers and/or wholesale partners as early as 4Q 2008. Furthermore, as required by the FCC, Covad provided electronic notification to all affected Covad customers on January 7, 2009. Covad's notice efforts are more fully described in Paragraph 5 of Covad's Section 63.71 Application filed with the FCC on April 22, 2009 ("Covad's FCC Application"). A copy of Covad's FCC Application is attached herein as **Exhibit 1** and incorporated herein for all purposes.

9. In its FCC Application, Covad explained that it was providing notice and seeking FCC approval of the discontinuance in a “*limited*” number of COs, specifically 21 COs, that would be shut-down in Connecticut, Missouri, North Carolina, Pennsylvania, Rhode Island, Texas and Virginia, and for which Covad would no longer provide broadband and/or VoIP services.<sup>2</sup> The COs were specifically listed in the draft Customer Notice attached as Exhibit A to the FCC Application. Nationwide, these COs supported services to 41 direct (or Covad retail) end users and 54 wholesale carriers.<sup>3</sup> Furthermore, as noted by Covad, the services that were affected were interstate high speed data and Internet services.<sup>4</sup>

10. Of the 21 nationwide COs identified for closure and discontinuance of services from those COs, there was only **one (1)** affected CO in Missouri (VYPKMO64).<sup>5</sup> Out of that *single* affected CO, Covad identified 12 wholesale partners, serving 49 end users, and four (4) Covad direct retail customers that would be affected. Per the FCC requirements and customer contracts, Covad provided direct notice to its retail customers and wholesale customers, providing them with 150 days advance notice.

11. A copy of Covad’s FCC Application was sent to all state regulatory commissions, including the Commission, on April 22, 2008.<sup>6</sup>

12. Covad worked with all wholesale and retail customers for the relevant services to ensure they were provided sufficient opportunity to make any necessary transitions to alternative retail or wholesale providers. To date, Covad has not have a single retail or wholesale customer

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<sup>2</sup> Covad’s FCC Application, pp. 1-2 and Exhibit A.

<sup>3</sup> *Id.*, Exhibit A.

<sup>4</sup> *Id.*, p. 1.

<sup>5</sup> *Id.*, Exhibit A.

<sup>6</sup> *Id.*, Certificate of Service.

object to the discontinuance of service in Missouri or any other State. No objections to Covad's FCC Application were filed. Per the FCC's rules, Covad's FCC Application was deemed approved by operation of law on May 23, 2009.

13. Covad does not take a position on whether its FCC Application "resembles" the Commission's procedure for ceasing operations, particularly since the broadband services (retail and wholesale) are not subject to the jurisdiction of the Commission and the VoIP services are subject to limited regulatory jurisdiction of the Commission.

14. Covad denies that it has requested "cancelation [sic] of its registration" in Missouri.<sup>7</sup> Covad is not aware of any document or pleading filed with the Commission containing such a request. Instead, as can be seen from the information provided in Covad's FCC Application, as well as state-specific information provided herein, Covad continues to provide VoIP services in Missouri. Therefore, Covad's VoIP registration should not be cancelled.

15. Covad continues to provide VoIP services to Missouri customers, notwithstanding the discontinuance of service in the single CO. Covad also remains collocated in 52 COs in Missouri which enables Covad to offer and to provide broadband and VoIP services.

#### **Motion Regarding Competitive Provider Certificate**

16. Covad denies that it is "not providing telecommunications services in Missouri"<sup>8</sup> and strongly opposes Staff's recommendation for the Commission to issue an order canceling Covad's competitive provider certificate.

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<sup>7</sup> Motion, ¶ 5.

<sup>8</sup> *Id.*

17. As can be seen above, Covad provides communications services in Missouri that provide over 5,000 customers (retail and wholesale partners) competitive alternatives. Covad has addressed the types of services it provides, as well as its need, qualification, and expectation to retain its competitive provider certificate with the Commission with respect to questions raised by the Staff regarding Covad's 2007 Statement of Revenue, and remains ready to continue to provide services, produce revenues that provide jobs and economic benefits to Missouri, pay all jurisdictional and required assessments, including USF, and be a good corporate citizen in the State, as well as before this Commission.

18. Covad submits the following rationale (as provided previously to the MPSC Staff) to support its position that it remains entitled to and should remain as a competitive provider in Missouri.

a. Covad utilizes its certificate as a competitive provider to provide competitive services to customers in Missouri. At the time that the MPSC approved Covad's certificate, Covad identified that it would provide voice and data services, but that if at any time it offered basic local telecommunications services, it would meet all of the requirements set forth by law and Commission rule. Since that time, Covad, as a certificated competitive provider, has provided and continues to provide competitive alternative services (DSL, Broadband, and VoIP) to customers in Missouri which benefit existing and potential consumers and the certificate provides Covad with that opportunity to provide competitive choices to consumers. Covad continues to meet the requirements of the statute for certified carriers: (1) Covad possesses sufficient technical, financial, and managerial resources and abilities to provide telecommunication services; (2) to the

extent that the MPSC's minimum standards apply to Covad's services, Covad complies with those standards; (3) Covad's service boundaries are consistent with those of the ILEC; and (4) Covad will provide basic local telecommunications service as a separate and distinct service, when and if it provides such service. Providing competitive choices to consumers is sound public policy and should continue to be promoted by the Commission. Covad has and continues to have an exemplary record as a competitive carrier in Missouri and has no plans to withdraw its services to Missouri small and medium-sized businesses. Covad has complied with all Commission regulations as they apply to Covad's services and will continue to do so.

b. While Covad has its own network to provide these services (which it provides either individually or in conjunction with other competitive carriers), Covad interconnects its network with AT&T and also obtains UNEs from AT&T for loops ("last mile to customers") and dedicated transport. Likewise, Covad collocates its facilities in AT&T's central offices and other Eligible Structures and thus obtains collocation from the Commission-approved terms, conditions, and rates of the physical and virtual collocation tariffs. For interconnection, access to UNEs, and collocation, AT&T requires that Covad be a certificated carrier in Missouri. Without the certificate, AT&T might take the position that it could no longer obtain such opportunities founded in the federal Telecommunications Act of 1996. To date, no state commission has denied or revoked Covad's competitive carrier certificate and no ILEC has refused to interconnect with Covad under the federal Telecommunications Act of 1996. Currently, Covad has a MPSC-approved interconnection agreement with AT&T Missouri.

## **Conclusion**

19. For the reasons stated herein, Covad opposes Staff's Motion. Covad remains a competitive provider of services to customers in Missouri and meets all of the requirements under the law to be a competitive provider and VoIP provider in the State of Missouri. At no time has Covad sought to relinquish its competitive provider certificate or VoIP registration, and does not believe that there is any support for the Motion or such an assertion.

20. Covad agrees with Staff that a hearing is not required on this Motion given the information contained herein since the Motion lacks merit.

21. Covad has been and remains willing to answer any concern, issue, or question that the Staff has regarding its FCC Application or its provision of services in Missouri. Staff can at any time contact the undersigned in-house Director, who is listed as the regulatory contact for Covad. Covad has always been able to address issues or concerns in this manner in all of the 44 states that it provides services in and remains committed to doing so in Missouri.

Accordingly, Covad respectfully requests that the Motion be withdrawn with prejudice and/or denied in its entirety, and for all such further relief to which Covad is entitled.

Respectfully submitted,

Katherine K. Mudge  
Director, State Affairs & ILEC Relations  
Covad Communications Company  
7000 N. Mopac Expressway, 2d Floor  
Austin, Texas 78731  
(512) 514-6380 (direct)  
(512) 514-6520 (fax)  
[kmudge@covad.com](mailto:kmudge@covad.com)



CURTIS, HEINZ,  
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

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130 S. Bemiston, Suite 200  
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Attorneys for DIECA Communications, Inc.  
d/b/a Covad Communications Company

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing documents was either faxed, emailed, or mailed by U.S. Mail postage paid this 7<sup>th</sup> day of August, 2009, to the following:

General Counsel  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
[gencounsel@psc.mo.gov](mailto:gencounsel@psc.mo.gov)

Lewis Mills  
Office of Public Counsel  
200 Madison Street, Suite 650  
P.O. Box 2230  
Jefferson City, MO 65102  
[opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov)

Jennifer Hernandez  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
[Jennifer.hernandez@psc.mo.gov](mailto:Jennifer.hernandez@psc.mo.gov)

/s/ Carl J. Lumley

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April 22, 2009

**DATE STAMP & RETURN**

**BY HAND DELIVERY**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**FILED/ACCEPTED**

**APR 22 2009**

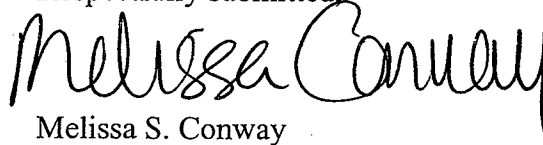
Federal Communications Commission  
Office of the Secretary

**Re: Section 63.71 Application of Covad Communications Company**

Dear Ms. Dortch :

On behalf of Covad Communications Company, transmitted herewith are an original and six (6) copies of an application for authority to discontinue the provision of broadband Internet service to a limited number of customers in Connecticut, Missouri, North Carolina, New York, Pennsylvania, Rhode Island, Texas and Virginia. Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Should you have any questions with respect to this matter, please do not hesitate to contact the undersigned at (202) 342-8552.

Respectfully submitted,



Melissa S. Conway

Enclosures

cc: Service List

Rodney McDonald, Competitive Policy Division, Wireline Competition Bureau

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Section 63.71 Application of )  
Covad Communications Company )

## SECTION 63.71 APPLICATION

Covad Communications Company (“Covad” or “Applicant”) hereby seeks authorization pursuant to Section 214(a) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 214, and Section 63.71 of the Commission’s Rules, 47 C.F.R. § 63.71, to discontinue its provision of domestic telecommunications services – namely, interstate high speed data and Internet services – to a limited number of customers in Connecticut, Missouri, North Carolina, New York, Pennsylvania, Rhode Island, Texas and Virginia.

Covad is a nationwide broadband provider. The company offers DSL, T1, broadband wireless and voice-optimized access directly through Covad's network and through Internet Service Providers, value added resellers, telecommunications carriers and affinity groups in the small and medium-sized businesses market. To provide its services, Covad owns and operates a nationwide broadband network that serves customers in 44 states. Covad is also authorized by the Federal Communications Commission to provide both interstate and international telecommunications services.

In an effort to maintain its nationwide broadband network of over 2,000 central offices in the most efficient manner possible, Covad has identified 21 central offices in its network that will be shut down. These central offices have been stagnant in growth for some time and support 41 direct end user customers of Covad and 54 wholesale carriers. A total of

463 circuits provisioned through the wholesale carriers will be affected by the proposed discontinuance. The proposed discontinuance will not result in harm to the affected customers because the customers will have the opportunity to select another telecommunications carrier for their telecommunications needs, and the CLECs and ILEC(s) in their area will continue to offer them high speed data and Internet service.

The Applicant provides the following information pursuant to Section 63.71 of the Commission's Rules:

1. Name and Address of the Carrier: Covad Communications Company is located at 2220 O'Toole Avenue, San Jose, CA 95131.
2. Date of Planned Service Discontinuance, Reduction or Impairment: The Applicant plans to discontinue high speed data and Internet service to the affected customers in the states listed above on June 10, 2009, or as soon thereafter as any necessary regulatory approvals are obtained. Applicant understands that this application will be automatically granted on the 31<sup>st</sup> day after public notice of filing unless the Commission notifies the Applicant to the contrary.
3. Points of Geographic Areas of Service Affected: Applicant proposes to discontinue the provision of high speed data and Internet service to the affected customers in the states of Connecticut, Missouri, North Carolina, New York, Pennsylvania, Rhode Island, Texas and Virginia.
4. Brief Description of Type of Service Affected: The telecommunications services received by the affected customers include the provision of interstate high speed data and Internet service.

5. Brief Description of the Dates and Methods of Notice to All Affected

Customers: On January 7, 2009, Covad provided e-mail notification to all affected Covad customers. The original notice informed direct customers that, due to changes in Covad's network coverage, it would no longer be able to provide broadband Internet service to the customer's particular location as of May 10, 2009 and provided an 888 number for customers to call to disconnect their service. Wholesale customers received an e-mail notification informing them that certain central offices would be shut down on May 10, 2009. Additionally, each wholesale customer received a list of its circuits impacted by the planned closures and was encouraged to work with their end users to find a new provider for their Internet services. On April 21 and 22, 2009, Applicant provided additional written customer notice by first-class mail in accordance with the requirements of Section 63.71(a) of the Commission's Rules, informing its customers of the revised June 10, 2009 disconnect date. Sample copies of the notices for both direct customers and wholesale customers are appended hereto as *Exhibit A*.

6. Whether the Carrier is Considered Dominant or Non-dominant with

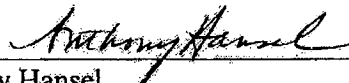
Respect to the Service to be Discontinued, Reduced or Impaired: Applicant is considered non-dominant with respect to the affected services.

In accordance with Section 63.71 of the Commission's Rules, a copy of this Application is being mailed to the Governors and public services commissions of the states of Connecticut, Missouri, North Carolina, New York, Pennsylvania, Rhode Island, Texas and Virginia and to the Special Assistant for Telecommunications for the Secretary of Defense, concurrently with the filing of this application.

Additional questions regarding this application may be addressed to the undersigned or to Melissa Conway, KELLEY DRYE & WARREN LLP, 3050 K Street, N.W., Suite 400, Washington, D.C. 20007, (202) 342-8552, mconway@kelleydrye.com.

Respectfully submitted,

Covad Communications Company

By:   
Anthony Hansel  
Assistant General Counsel  
Covad Communications Company  
1750 K Street, NW, Suite 200  
Washington, D.C. 20006  
(202) 220-0410

Dated: April 22, 2009

# **EXHIBIT A**



2220 O'Toole Ave  
San Jose, CA 95131

**Urgent message regarding your Covad Internet service**

Service to this location to be discontinued as of June 10, 2009

Dear \_\_\_\_\_,

We have extended the final service disconnection date from May 10 to June 10, 2009 in order to provide you with additional time to find an alternative Internet service provider.

As of June 10, 2009, Covad will no longer be able to provide broadband Internet service to the address below. Due to some changes in our network coverage, we can no longer provide service to locations in your specific area. We apologize for any inconvenience this may cause.

This notice applies to the following location:

Company Name \_\_\_\_\_  
Address \_\_\_\_\_  
Retail Account # \_\_\_\_\_  
Service Type Standard DSL

Unfortunately, Covad does not have any alternative broadband services to offer you at this location.

The FCC will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the §63.71 Application of Covad Communications Company. Comments should include specific information about the impact of this proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service.

Please call us at 888-64-COVAD (888-642-6823), option 4, to disconnect your service or it will automatically be disconnected on June 10, 2009. Of course, you will not be charged any early termination fees, however, monthly service fees will apply until service is terminated on June 10.

Thank you for your understanding and for having chosen Covad as your broadband services provider. Again, we sincerely apologize for the inconvenience.

Sincerely,

Covad Communications





April 22, 2009

**Re:** Covad closing of selected COs extended to June 10, 2009

**Dear Valued Partner,**

In January 2009, we informed you that Covad has identified 21 central offices (COs) in our network that would be shut down on May 10, 2009. These COs have been stagnant in growth for some time and support very few end users. Many of them are in remote areas with a low population. The date of the planned decommissioning of Covad broadband Internet service has been extended to **June 10, 2009**, or as soon thereafter as the necessary regulatory requirements permit.

We plan to close the following central offices on June 10, 2009. Your Covad account representative has emailed a list of the specific circuits that will be affected to his or her contact at your company.

ALQPPAAL	FLYVPAFI	OYBANYOY	STKTNYSK
BADNPABA	GRLDTXXE	PJSTNYPJ	TMBLCT00
BDVGNYBV	HDLYVAXA	PLANTXXF	VYPKMO64
CRHDNYCH	HMPNVADC	PLMYPAPA	
DRHMNCXG	HUMLPAHM	PNBGAPAB	
EGRNRICH	IMPRPAIM	SMBYCT00	

Please work with any customers in these COs to find a new provider for their Internet service. We plan to disconnect these circuits on June 10, 2009. Early termination fees do not apply to these circuits.

The FCC will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the §63.71 Application of Covad Communications Company. Comments should include specific information about the impact of this proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service.

We apologize for any inconvenience this may cause. Covad is committed to providing you with a robust, reliable nationwide portfolio of broadband services. This network activity helps us keep our prices to you competitive and our nationwide coverage effective and relevant.

Please contact your sales executive if you have any questions.

**Regards,**

**Covad Communications**

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Section 63.71 Application was served this 22<sup>nd</sup> day of April 2009, by mailing true and correct copies thereof, postage prepaid, to the following persons at the addresses listed below.

Secretary of Defense  
ATTN: Special Assistant for Telecommunications  
Pentagon  
Washington, DC 20301

Secretary  
State of Connecticut  
Department of Public Utility Control  
Ten Franklin Square  
New Britain, CT 06051

The Honorable Bev Perdue  
Governor of North Carolina  
Office of the Governor  
20301 Mail Service Center  
Raleigh, NC 27699-0301

The Honorable M. Jodi Bell  
Governor of Connecticut  
Executive Office of the Governor  
State Capitol  
210 Capitol Avenue  
Hartford, CT 06106

Secretary  
New York State  
Department of Public Service  
3 Empire State Plaza  
Albany, NY 12223-1350

Secretary  
Missouri Public Service Commission  
Public Information Office  
Governor Office Building  
200 Madison Street  
P.O. Box 360  
Jefferson City, MO 65102-0360

The Honorable David Patterson  
Governor of New York  
State Capitol  
Albany, NY 12224

The Honorable Jeremiah Nixon  
Governor of Missouri  
Office of the Governor  
Room 216, State Capitol Building  
Jefferson City, MO 65101

Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Secretary  
North Carolina Utilities Commission  
430 North Salisbury Street  
Dobbs Building  
Raleigh, NO 27603-5918

The Honorable Edward G. Rendell  
Governor of Pennsylvania  
225 Main Capitol Building  
Harrisburg, PA 17120

Secretary  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

The Honorable Don Carcieri  
Governor of Rhode Island  
State House  
Providence, RI 02903-1196

Secretary  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
PO Box 13326  
Austin, TX 78711-3326

The Honorable Rick Perry  
Governor of Texas  
Office of the Governor  
P.O. Box 12428  
Austin, TX 78711-2428

Secretary  
Commonwealth of Virginia  
State Corporation Commission  
Tyler Building, 1300 E. Main Street  
Richmond, VA 23219

The Honorable Tim Kaine  
Governor of Virginia  
Patrick Henry Building, 3<sup>rd</sup> Floor  
1111 East Broad Street  
Richmond, VA 23219



Melissa Conway