



Covad filed complaints here and in Georgia to ensure that Covad's claims are preserved in the event of further forum shopping by BellSouth. Covad hopes, however, that its claims can be resolved at the FCC. For the reasons set forth below, therefore, Covad respectfully requests that the Commission stay further proceedings in this matter pending resolution of Covad's complaint at the FCC. Neither BellSouth, the Commission, nor the public interest would be prejudiced by issuance of the stay, and both justice and administrative expediency support grant of the stay.

### FACTS

In December 2000, Covad filed a complaint against BellSouth in the United States District Court for the Northern District of Georgia, Atlanta Division. The complaint alleged that BellSouth violated state and federal antitrust laws, breached its Interconnection Agreement with Covad, violated the Telecom Act, and tortiously interfered with Covad's business relationships with its current and potential customers. In response to a BellSouth motion to dismiss, the District Court dismissed, on jurisdictional grounds, Covad's claims that BellSouth breached the Interconnection Agreement and violated 47 U.S.C. § 222 of the Telecom Act. The District Court found that 47 U.S.C. § 252(e) strips the district courts of the United States of original jurisdiction over any claims that "directly implicate the regulatory scheme of the Telecom Act," other than the power to review a determination on those issues by a state commission. *See Covad Communications Co., et al. v. BellSouth Corp., et al.*, 299 F.3d 1272, 1279 (11th Cir. 2002), *vacated on other grounds*, 124 S. Ct. 1272 (2004). Instead, the District Court held that all such claims must be brought before state commissions in the first instance.

Following a long series of appeals, remands and reconsiderations of the Covad litigation and other cases raising similar issues, the Eleventh Circuit affirmed the dismissal of Covad's breach of contract and Telecom Act claims on the basis of its decision in *BellSouth Telecomm., Inc. v. MCIMetro Access Transmission Servs. Inc.*, 317 F.3d 1270, 1277 (11th Cir. 2003). *Covad Communications Co., et al. v. BellSouth Corp., et al.*, 374 F.3d 1044, 1052-53 (11th Cir. 2004), *cert. denied*, \_\_\_ U.S. \_\_\_, 125 S.Ct. 1591 (2005).

On February 18, 2005, the parties to this case entered into an agreement to toll the statute of limitations for the claims alleging breach of the Interconnection Agreement and violation of the Telecom Act (the "tolled claims"). The parties extended that agreement on several occasions while they attempted, unsuccessfully, to resolve their disputes. Covad and BellSouth have stipulated to the voluntary dismissal of what remained of the antitrust and tort claims pending before the District Court. Covad has decided instead to pursue its breach of Interconnection Agreement and Telecom Act claims. To ensure that it has preserved its rights in the correct forum, Covad is filing its complaint on the tolled claims with the Commission and simultaneously with the FCC and the Georgia Public Service Commission. Covad has requested a similar stay in the Georgia proceeding.

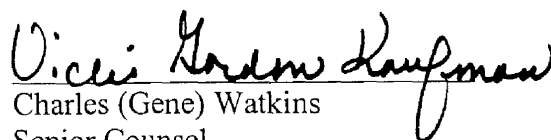
### ARGUMENT

Covad seeks to stay this proceeding pending resolution of its concurrently filed complaint before the FCC. The Commission has the discretion to grant the Motion For Stay in the interests of efficiency and conservation of judicial resources, and such interests are served where, as here, a similar complaint is concurrently pending before the FCC. *See, e.g., In re: Complaint by BellSouth Telecommunications, Inc. Against Thrifty Call, Inc. Regarding Practices in the Reporting of Percent Interstate Usage for*

*Compensation for Jurisdictional Access Services*, Docket No. 000475-TP, Order No. PSC-01-2309-PCO-TP (issued November 21, 2001) (finding it “appropriate and in the interest of judicial economy to stay th[e] proceeding until the FCC issues a ruling on [the question]”); *Connolly v. State of Florida*, 885 So.2d 1036 (Fla. 5th DCA 2004) (finding that conserving limited judicial resources is a proper basis for discretionary decision to limit further filings in case). In the present matter, grant of the stay would allow the Commission to conserve its limited judicial and administrative resources, as the FCC may resolve the issues relevant to the Complaint without need of further action by this Commission. Grant of the stay would allow the FCC to resolve the issues raised in the Complaint once and for all, reducing the risk of disparate and conflicting results in different fora. Moreover, grant of a stay is in the interests of justice, as the FCC may resolve the issues raised in Covad’s Complaint. Grant of the stay would also benefit Covad, BellSouth, and the Florida consumers who subscribe to their services by avoiding the duplicative cost of litigating the same set of facts in multiple fora.

#### CONCLUSION

For these reasons, Covad respectfully requests that the PSC stay this proceeding pending action by the FCC on Covad’s complaint in that forum.



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Dated: November 17, 2005

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Stay Pending FCC Action was served via (\*) hand delivery or U.S. Mail this 17<sup>th</sup> day of November, 2005, to the following:

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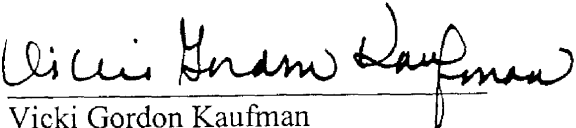
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