

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint by DIECA Communications, Inc. d/b/a Covad Communications Company against BellSouth Telecommunications, Inc. for alleged breaches of interconnection agreement.

DOCKET NO. 050881-TP  
ORDER NO. PSC-05-1244-PCO-TP  
ISSUED: December 21, 2005

ORDER GRANTING MOTION FOR STAY PENDING FCC ACTION AND GRANTING IN PART THE AGREED MOTION FOR EXTENSION OF TIME

This Order is issued under the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

**I. Case Background**

Five years ago, DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) in the U.S. District Court for the Northern District of Georgia alleging breach of the parties' interconnection agreement and violation of the Telecom Act of 1996. Last year, the U.S. Supreme Court affirmed the U.S. Court of Appeals' (Eleventh Circuit) affirmation of the District Court's holding that Section 252(e) strips the district court of jurisdiction over claims that, "directly implicate the regulatory scheme of the Telecom Act," other than to review a determination on those issues by a state commission.<sup>1</sup>

In light of these court decisions, Covad filed its same complaint against BellSouth with the FCC and relevant state commissions. Covad invoked our jurisdiction pursuant to the Telecom Act of 1996, the above court decisions, and the parties' interconnection agreement. In addition to the instant complaint, Covad concurrently filed with us a Motion for Stay Pending FCC Action (Motion for Stay). BellSouth did not file a response to the Motion for Stay.

In its Motion for Stay, Covad states that it prefers one body of law, the FCC, to decide its complaint against BellSouth. Covad argues that staying this proceeding would benefit this Commission, Covad, BellSouth and Florida consumers by avoiding duplicative costs of litigating the same dispute. This would conserve state resources and reduce administrative costs. For this reason, Covad requests that the Commission stay further proceedings in this docket pending resolution of Covad's complaint at the FCC.

<sup>1</sup> See, Covad Communications Co. et al. v. BellSouth Corp., et al, 299 F.3d 1272, 1279 (11<sup>th</sup> Cir. 2002), vacated on other grounds, 124 S.Ct. 1143, (2004).

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On December 5, 2005, BellSouth filed an Agreed Motion for Extension of Time (Agreed Motion). In the Agreed Motion, the parties request a thirty (30) day extension of time or until January 6, 2006, for BellSouth to respond to Covad's complaint.

## **II. Decision**

### **A. Covad's Motion for Stay**

Upon consideration and in the interest of judicial economy, Covad's Motion for Stay is granted. This docket will be held in abeyance until the disposition of Covad's complaint before the FCC, a parties' motion, or upon the Commission's own motion.

### **B. Agreed Motion for Extension of Time**

Upon consideration and also in the interest of judicial economy, the Agreed Motion is granted as modified below. BellSouth will have 30 days from the date this Commission enters an Order lifting the stay.

### **C. Conclusion**

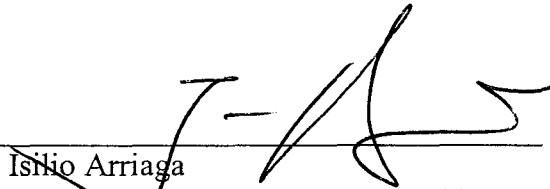
Covad's Motion for Stay is granted in full, and the Agreed Motion for Extension of Time is granted in part as stated in the body of this Order.

Based on the foregoing, it is

ORDERED by Commissioner Isilio Arriaga that DIECA Communications, Inc. d/b/a Covad Communications Company's Motion for Stay Pending FCC Action is hereby granted as stated in the body of this Order. It is further

ORDERED that the Agreed Motion for Extension of Time is hereby granted as modified in the body of this Order.

By ORDER of Commissioner Isilio Arriaga, as Prehearing Officer, this 21st day of December, 2005.



Isilio Arriaga  
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.