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**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of )  
John Kavlich, MD dba Patient First, )  
Complainant, )

v. )

Case No. 07-904-TP-CSS

Level 3 Communications, Inc., )  
AT&T Ohio, and DIECA Communications, )  
Inc. dba Covad Communications )  
Company, )

Respondents. )

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**DIECA COMMUNICATIONS, INC. DBA  
COVAD COMMUNICATIONS COMPANY'S  
MOTION TO DISMISS And ANSWER**

Pursuant to the March 26, 2008 and April 10, 2008 Attorney Examiner's Entries and Ohio Administrative Code (O.A.C.) Rule 4901-9-01, DIECA Communications, Inc. dba Covad Communications Company ("Covad") hereby submits its Motion to Dismiss and Answer to the Complaint filed by John Kavlich, MD dba Patient First ("Complainant").

**ANSWER**

Covad generally denies the allegations set forth in the Complaint for lack of information and belief. The Complainant does not name or allege any conduct by or raise any complaint against Covad. Therefore, there are no facts alleged by Complainant that relate to Covad or to which Covad can respond.

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## **MOTION TO DISMISS**

Complainant fails to state a claim upon which relief can be granted against Covad, and the Complainant fails to state that Covad provided unreasonable, unjust, or insufficient service in violation of the law. Covad requests that the Complaint as to Covad be dismissed.

Furthermore, Covad respectfully submits that the Public Utilities Commission of Ohio (“Commission”) does not have jurisdiction over this Complaint since the Complaint relates to the provision of Voice over Internet Protocol (“VoIP”) services, not telecommunications services over which this Commission has explicit jurisdiction. VoIP services are not regulated by the Commission, and therefore, the Commission is not the appropriate forum or venue for consideration of this Complaint. The appropriate forum, if any, is before the Federal Communications Commission (“FCC”). Covad is prepared to file a motion to remove the Complaint to the FCC, if necessary, as further explained below.

## **CONDITIONAL RESPONSE TO ALLEGATIONS**

1. Without waiving Covad’s right to assert lack of jurisdiction and without waiving a request to seek a Commission determination on the jurisdictional issue, Covad provides a brief response to the Complaint.

2. Covad admits that it is a certificated competitive local exchange provider in the State of Ohio.

3. Covad was deemed a “necessary party,” *sua sponte* by the Attorney Examiner Entry dated March 26, 2008.

4. Upon information and belief, Covad admits that it processed a Letter of Agency (“LOA”) from a new customer, Allcare Dental & Dentures (“Allcare”), on or about May 17, 2007. Covad further admits that the LOA, a copy of which is attached to Level 3

Communications, Inc.'s ("Level 3") Letter dated October 25, 2007, filed during an informal complaint process, is a true and correct copy of Allcare's LOA.<sup>1</sup> Per the LOA, Allcare authorized Covad to replace the VoIP services provided formerly by AT&T and to take necessary steps to authorize the change in those services for four (4) telephone numbers ("TNs"). The only TN in controversy is "440-826-4400" – a TN explicitly listed on the LOA.

5. Upon information and belief, Covad admits that it processed the proper paperwork through its LNP vendor to port the four TNs pursuant to the LOA. Level 3 is Covad's voice switch provider in the provision of VoIP services. Pursuant to established procedures, Level 3 placed the porting change orders per Covad's request. Covad further admits that it continued to process port requests for all four TNs in reliance on the LOA until the ports were completed.

6. Upon information and belief, Covad further admits that Complainant is not a customer of Covad and Covad has not provided any services to Complainant. Covad is not directly aware of the facts asserted in Complaint as to lack of service and is not aware of any damages that Complainant alleges occurred or is seeking to recover within the jurisdiction of this Commission.

7. Covad has not intentionally or knowingly violated any federal rules regarding "slamming related to its provisioning of VoIP services," nor did it intend to authorize the porting of a number that was not used by Allcare. Instead, Covad relied in good faith on the LOA to pursue the porting of the TNs, and such reliance was reasonable.


**WHEREFORE**, having fully responded to the allegations set forth in the Complaint, Respondent DIECA Communications, Ind. dba Covad Communications Company, respectfully

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<sup>1</sup> Covad notes that the LOA is a confidential document, as marked. Covad did not authorize the release or disclosure of the LOA and reserves the right to seek all available remedies for such disclosure.

requests that the Commission issue an order denying John Kavlich, MD dba Patient First, the relief requested in its Complaint as it relates to Covad. Furthermore, Covad respectfully requests that the Commission dismiss the Complaint with prejudice as it relates to Covad.


Respectfully submitted on behalf of  
DIECA COMMUNICATIONS INC. DBA  
COVAD COMMUNICATIONS COMPANY



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# **CERTIFICATE OF SERVICE**

I hereby certify that a copy of DIECA COMMUNICATIONS, INC. DBA COVAD COMMUNICATIONS COMPANY'S MOTION TO DISMISS AND ANSWER was served by first class mail, postage prepaid this 22<sup>nd</sup> day of April 2008 on the following parties:

  
\_\_\_\_\_  
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