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TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
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FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (WRIGHT) *CRB*
OFFICE OF THE GENERAL COUNSEL (KEATING, CHRISTENSEN) *AC*

RE: DOCKET NO. 001097-TP - REQUEST FOR ARBITRATION CONCERNING
COMPLAINT OF BELL SOUTH TELECOMMUNICATIONS, INC. AGAINST
SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. FOR
RESOLUTION OF BILLING DISPUTES.

AGENDA: 04/02/02 - REGULAR AGENDA - NOTICE OF VOLUNTARY WITHDRAWAL
OF COMPLAINT - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\001097WD.RCM

CASE BACKGROUND

BellSouth Telecommunications, Inc. (BellSouth) provides local exchange telecommunications services for resale pursuant to the Telecommunications Act of 1996 and to resale agreements entered into between BellSouth and various Alternative Local Exchange Companies (ALECs). Supra Telecommunications and Information Systems, Inc. (Supra) is an ALEC certified by this Commission to provide local exchange services within Florida. On August 9, 2000, BellSouth filed a complaint against Supra, alleging that Supra has violated Attachment 6, Section 13 of their present agreement by refusing to pay non-disputed sums. The complaint also alleges billing disputes arising from the prior resale agreement with Supra.

On August 30, 2000, Supra filed its Motion to Dismiss Complaint or, in the Alternative, Stay Proceedings and/or Compel

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Arbitration. That Motion was granted in part and denied in part by Order No. PSC-00-2250-FOF-TP, issued November 28, 2000. In the Order, the Commission retained jurisdiction over all disputes arising out of the original Agreement between the two parties, entered into on June 1, 1997. On November 27, 2000, Supra filed its Answer and Counterclaim to BellSouth's Complaint. Subsequently, Supra filed an Amended Answer and Counterclaim on December 18, 2000.

On May 3, 2001, an evidentiary hearing was held on the portions of the complaint over which the Commission retained jurisdiction. The findings from that hearing were incorporated in Final Order on Complaint, Order No. PSC-01-1585-FOF-TP, issued July 31, 2001. On August 15, 2001, Supra filed its Motion for Reconsideration of Final Order No. PSC-01-1585-FOF-TP, and that Motion was set for Agenda Conference on October 2, 2001.

Prior to the scheduled Agenda Conference, a procedural irregularity was brought to the attention of the Commission, which prompted a deferral of the item from the scheduled Agenda. The Commission directed further inquiry, which failed to disclose any prejudice to either party. Nevertheless in order to remove any possible appearance of prejudice, this matter was set for a rehearing. Therefore, by Order No. PSC-02-0143-PCO-TP, issued January 31, 2002 (Order Setting Matter For Rehearing and Establishing Procedure), the prehearing conference, hearing, and other key activities dates were set forth for the hearing process in this case. This matter is scheduled for hearing on April 5, 2002.

On February 13, 2002, Supra filed its Motion to Dismiss for Lack of Subject Matter Jurisdiction. On February 20, 2002, BellSouth filed its Motion for Extension of Time to Respond to Supra's Motion to Dismiss for Lack of Subject Matter Jurisdiction. On February 27, 2002, BellSouth filed its Response to Supra's Motion to Dismiss for Lack of Subject Matter Jurisdiction.

On February 22, 2002, BellSouth filed its Motion to Strike Portions of the Direct Testimony of Olukayode Ramos and David Nilson. On March 1, 2002, Supra filed its Response to BellSouth's Motion to Strike Portions of the Direct Testimony of Olukayode Ramos and David Nilson.

At its March 19, 2002, Agenda Conference, the Commission granted the Motion for Extension of Time to Respond, denied the Motion to Dismiss, and denied the Motion to Strike.

Thereafter, on March 26, 2002, BellSouth and Supra filed a Joint Notice of Voluntary Dismissal Without Prejudice of the complaint and counter-claim filed in this docket. Staff, therefore, recommends that following.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge the Joint Notice of Voluntary Dismissal without Prejudice?

RECOMMENDATION: Yes. The Commission should acknowledge the Joint Voluntary Dismissal, cancel the hearing scheduled for April 5, 2002, find that the Voluntary Dismissal renders any and all outstanding motions moot, and close this Docket.

STAFF ANALYSIS: The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So.2d 578, 579 (Fla. 1975). It is also established civil law that once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68, 69 (Fla. 1978). Therefore, staff recommends that the Commission acknowledge BellSouth's and Supra's Joint Voluntary Dismissal Without Prejudice and cancel the hearing. Staff also recommends that the Commission find that the outstanding Requests for Confidential Classification, as well as Supra's March 22, 2002, Motion to Compel More Responsive Answers to its First Set of Interrogatories, are rendered moot. Thereafter, the Docket should be closed and any confidential information retained in the Docket should be returned to the respective owners.