

State of Florida



Public Service Commission

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DATE: June 17, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayo)

FROM: Division of Competitive Markets & Enforcement (Muskovac) *[Signature]*
Office of the General Counsel (Fordham) C.J.F.

RE: Docket No. 030103-TP – Request for arbitration concerning complaint of MCI metro Access Transmission Services LLC and MCI WorldCom Communications, Inc. against BellSouth Telecommunications, Inc. for alleged breach of interconnection agreements with respect to rates charged for certain high-capacity circuits.

AGENDA: 06/29/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030103.RCM.DOC

Case Background

On January 29, 2003, MCI metro Access Transmission Services LLC and MCI WORLDCOM Communications, Inc. (collectively MCI) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for breach of the parties' interconnection agreements with respect to rates charged for certain high-capacity circuits. On February 7, 2003, BellSouth filed an Unopposed Motion for Extension of Time in which to file its response to the complaint. The extension of time was granted on February 28, 2003, by Order No. PSC-03-0284-PCO-TP. BellSouth submitted its Answer to the Complaint on April 15, 2003. On May 5, 2003, the parties jointly filed a Motion for Procedural and Scheduling Order, agreeing to certain discovery dates to coordinate discovery in this proceeding with contemporaneous proceedings in other states. That Motion was granted by the issuance of Procedural Order No. PSC-03-0703-PCO-TP, issued June 12, 2003.

On July 29, 2003, the parties filed a Joint Motion for Stay of Proceedings. The parties stated that they entered into a Settlement Agreement, effective July 25, 2003, which addressed a

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number of items at issue between the parties. Included in the Settlement Agreement are the issues raised in this docket. Accordingly, on June 1, 2004, MCI filed its Notice of Dismissal of its Complaint. This recommendation addresses MCI's Notice of Dismissal of its Complaint.

Discussion of Issues

Issue 1: Should the Commission acknowledge MCI's Notice of Dismissal of its Complaint and close this docket?

Recommendation: Yes. (L. FORDHAM)

Staff Analysis: As noted in the Case Background, MCI has filed its Notice of Dismissal of its Complaint. 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 MCI's Notice of Dismissal of its Complaint. Since no further Commission action is necessary, staff recommends that this docket be closed.