

State of Florida



# Public Service Commission

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**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** June 2, 2005

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

**FROM:** Office of the General Counsel (Teitzman) *AT XO for BKE*  
Division of Competitive Markets & Enforcement (Lee, Dowds) *JD*

**RE:** Docket No. 040489-TP – Emergency complaint seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by XO Florida, Inc. and Allegiance Telecom of Florida, Inc. (collectively, Joint CLECs).

Docket No. 040520-TP – Emergency petition seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by the Florida Competitive Carriers Association, AT&T Communications of the Southern States, LLC, MCImetro Access Transmission Services, LLC, and MCI WorldCom Communications, Inc.

**AGENDA:** 06/14/05 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Deason

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\040489.RCM.DOC

### Case Background

On May 21, 2004, in Docket No. 040489-TP, XO Florida, Inc. (XO) and Allegiance Telecom of Florida, Inc. (Allegiance) filed their Emergency Complaint Seeking An Order Requiring BellSouth Telecommunications Inc. (BellSouth) and Verizon Florida Inc. (Verizon) to

DOCUMENT NUMBER-DAT

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Docket Nos. 040489-TP, 040520-TP

Date: June 2, 2005

Continue to Honor Existing Interconnection Obligations. On June 10, 2004, BellSouth filed its Response in Opposition and Motion to Dismiss and Verizon filed its Motion to Dismiss with Supporting Memorandum.

On May 28, 2004, in Docket No. 040520-TP, Florida Competitive Carriers Association (FCCA), AT&T Communications of the Southern States, LLC, (AT&T), and MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (collectively MCI), filed their Emergency Petition Seeking Order Requiring BellSouth and Verizon to Continue to Honor Existing Interconnection Obligations. On June 17, 2004, BellSouth filed its Response in Opposition and Motion to Dismiss and Verizon filed its Response in Opposition.

On November 4, 2004, Order No. PSC-04-1083-PCO-TP was issued holding both dockets in abeyance. On May 11, 2005, the Competitive Carriers of the Southeast (CompSouth f/k/a Florida Competitive Carriers Association), AT&T and MCI filed their Notice of Voluntary Dismissal of their Emergency Petition in Docket No. 040520-TP. On May 19, 2005, XO and Allegiance filed their Notice of Voluntary Dismissal of their Emergency Complaint in Docket No. 040489-TP.

### **Discussion of Issues**

**ISSUE 1:** Should the Commission acknowledge XO and Allegiance's Notice of Voluntary Dismissal of their Emergency Complaint in Docket No. 040489-TP, and CompSouth, AT&T and MCI's Notice of Voluntary Dismissal of their Emergency Petition in Docket No. 040520-TP?

**RECOMMENDATION:** Yes. The Commission should acknowledge XO and Allegiance's Notice of Voluntary Dismissal of their Emergency Complaint in Docket No. 040489-TP, and CompSouth, AT&T and MCI's Notice of Voluntary Dismissal in Docket No. 040520-TP. In addition, the Commission should find that the voluntary dismissals render any and all outstanding motions moot. (TEITZMAN, LEE)

**STAFF ANALYSIS:** The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lundsford, 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 XO and Allegiance's Notice of Voluntary Dismissal of their Emergency Complaint in Docket No. 040489-TP, and CompSouth, AT&T and MCI's Notice of Voluntary Dismissal in Docket No. 040520-TP, and find that the voluntary dismissals render any and all outstanding motions moot. Additionally, the Commission should find that all confidential materials filed in these Dockets should be returned to the filing party.

**ISSUE 2:** Should these dockets be closed?

**RECOMMENDATION:** Yes. There is nothing further in these dockets for this Commission to consider, and the dockets should be closed. (TEITZMAN)

**STAFF ANALYSIS:** There is nothing further in these dockets for this Commission to consider. Therefore, the dockets should be closed.