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COMMISSION
CLERK

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

DATE: December 27, 2006

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

FROM: Office of the General Counsel (Teitzman, Scott) *AT KS PFW*
Division of Competitive Markets & Enforcement (King, Pruitt) *JK JMB*

RE: Docket No. 060455-TP – Complaint against AT&T Communications of the Southern States, LLC d/b/a AT&T d/b/a Lucky Dog Phone Co. d/b/a ACC Business d/b/a SmarTalk d/b/a Unispeaksm Service d/b/a www.prepayserviceguide.com d/b/a CONQUEST for failure to pay intrastate access charges pursuant to Embarq's tariffs, by Embarq Florida, Inc., f/k/a Sprint-Florida, Incorporated.

AGENDA: 01/09/07 – Regular Agenda – Stipulation for Dismissal With Prejudice

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Tew

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060455.RCM.DOC

Case Background

On June 14, 2006, Embarq Florida, Inc., f/k/a Sprint-Florida, Incorporated (Embarq), filed its Complaint against AT&T Communications of the Southern States, LLC d/b/a AT&T d/b/a Lucky Dog Phone Co. d/b/a ACC Business d/b/a SmarTalk d/b/a Unispeaksm Service d/b/a www.prepayserviceguide.com d/b/a CONQUEST (AT&T) for failure to pay intrastate access charges pursuant to Embarq's tariffs. On July 10, 2006, AT&T filed its Motion to Dismiss Embarq's Complaint or, in the Alternative, Stay the Proceeding. Embarq filed its Response on July 17, 2006.

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FPSC-COMMISSION CLERK

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On September 18, 2006, the Commission issued Order No. PSC-06-0777-FOF-TP holding this proceeding in abeyance for a 60-day period ending October 30, 2006, while the parties participated in a mediation proceeding held before the Federal District Court for the Western District of Missouri, Case Number 06-0480-CV-W-RED.

On October 30, 2006, the parties filed a Joint Status Report and Motion for Continued Abeyance. The parties requested a continuance of the abeyance pending finalization of a settlement or a determination that settlement will not occur. On November 20, 2006, the Commission issued Order No. PSC-06-0967-PCO-TP granting the parties' Joint Motion for Continued Abeyance.

On November 29, 2006, the parties filed a Stipulation for Dismissal With Prejudice.

Discussion of Issues

Issue 1: Should the Commission acknowledge the parties' Stipulation for Dismissal With Prejudice?

Recommendation: Yes. The Commission should acknowledge the parties' stipulated voluntary dismissal of the Complaint. **(TEITZMAN, SCOTT)**

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). In their Stipulation for Dismissal With Prejudice, the parties advise the Commission that they have executed a confidential Settlement and Mutual Release Agreement that settles the issues in this docket, with prejudice to the rights of each party to further pursue these issues in any forum. Accordingly, staff recommends that the Commission acknowledge the parties' Stipulation for Dismissal With Prejudice. No other party has filed for intervention in this matter; therefore, acknowledging the stipulated voluntary dismissal will not be prejudicial to any party.

Issue 2: Should this docket be closed?

Recommendation: Yes. With the parties' stipulated voluntary dismissal, there are no further matters for the Commission to adjudicate in this docket and, therefore, it should be closed. **(TEITZMAN, SCOTT)**

Staff Analysis: With the parties' stipulated voluntary dismissal, there are no further matters for the Commission to adjudicate in this docket and, therefore, it should be closed.