



Public Service Commission
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DATE: OCTOBER 25, 2001
TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYO)
FROM: DIVISION OF LEGAL SERVICES (HELTON) *Net*
DIVISION OF COMPETITIVE SERVICES (BULECZA-BANKS, CASEY, ILERI, LEWIS, MAKIN, MOSES) *MM*
RE: DOCKET NO. 010740-TP - REQUEST FOR ARBITRATION CONCERNING COMPLAINT OF IDS TELCOM LLC AGAINST BELL SOUTH TELECOMMUNICATIONS, INC. REGARDING BREACH OF INTERCONNECTION AGREEMENT.

AGENDA: 11/6/2001 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\010740.RCM

CASE BACKGROUND

On May 11, 2001, IDS Long Distance, Inc. n/k/a IDS Telecom, L.L.C. (IDS) filed a Complaint and Request for Emergency Relief against BellSouth Telecommunications, Inc. (BellSouth). IDS raised four counts against BellSouth: (1) BellSouth breached the interconnection agreement by failing to provide IDS Operational Support Systems (OSS) and Unbundled Network Elements (UNEs) at parity; (2) BellSouth perpetrated an anticompetitive campaign of "win back" tactics against IDS, including the Full Circle Program and fraudulent telemarketing schemes; (3) BellSouth permitted the sharing of IDS' customer proprietary network information between its retail and wholesale divisions in violation of the Telecommunications Act of 1996; and (4) the Commission should immediately initiate a show cause proceeding to investigate and sanction BellSouth for its anticompetitive activities that have

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harmed citizens of the State of Florida. BellSouth filed a response and the matter was set for hearing. After the first day of hearing, on September 28, 2001, IDS filed a Notice of Voluntary Dismissal with Prejudice.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge IDS Telecom LLC's Notice of Voluntary Dismissal with Prejudice?

RECOMMENDATION: Yes. IDS' voluntary dismissal with prejudice divests the Commission of jurisdiction over this matter. The only further action the Commission should take is to acknowledge the dismissal, find that any pending motions are rendered moot, and close the 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). The only additional action the Commission should take is to acknowledge IDS' dismissal and close the docket. Staff recommends that the Commission acknowledge IDS' voluntary dismissal with prejudice. Staff also recommends that the Commission find that IDS' Motion to Compel Better Responses to its Requests for Production and Interrogatories filed September 21, 2001, is rendered moot by IDS' voluntary dismissal.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.