

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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MAY - 9 AM 10:51A
COMMISSION CLERK

DATE: MAY 9, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (SIMMONS) *SAS*
OFFICE OF THE GENERAL COUNSEL (FORDHAM) *c. J. Fordham*

RE: DOCKET NO. 020252-TP - COMPLAINT OF FLORIDA DIGITAL NETWORK, INC. AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. AND REQUEST FOR EMERGENCY RELIEF REQUIRING BELLSOUTH TO PROCESS ORDERS PENDING RESOLUTION OF DISPUTES.

AGENDA: 05/21/02 - 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\020252AW.REC

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). Florida Digital Network, Inc. (FDN) is an ALEC certified by this Commission to provide local exchange services within Florida. On March 18, 2002, FDN filed its Complaint against BellSouth, requesting emergency relief and an order requiring BellSouth to process orders pending resolution of disputes. On April 3, 2002, BellSouth filed its answer, as well as a counterclaim requesting relief for monies owed. Pursuant to Order No. PSC-02-0488-PCO-TP, issued April 8, 2002, the matter was scheduled for hearing on May 2, 2002.

DOCUMENT NUMBER-DATE

05021 MAY-98

FPSC-COMMISSION CLERK

The parties agreed to mediation of the dispute with our staff acting as mediator. Following an extensive mediation session with a staff mediator, the parties continued with negotiations over the matters in dispute. Thereafter, on April 23, 2002, BellSouth and FDN filed a Joint Notice of Voluntary Dismissal Without Prejudice of the complaint and counter-claim filed in this docket. Staff, therefore, recommends the 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, find that the Voluntary Dismissal renders any and all outstanding motions moot, and close this Docket. (FORDHAM)

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 FDN's Joint Voluntary Dismissal Without Prejudice and cancel the hearing. Staff also recommends that the Commission find that any outstanding motions are rendered moot. Thereafter, the Docket should be closed and any confidential information retained in the Docket should be returned to the respective owners, rendering the outstanding Request for Confidential Classification moot.