



Public Service Commission

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DATE: OCTOBER 24, 2002

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

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (ILERI, BROUSSARD, EULECZA-BANKS, CASEY, KELLY, MOSES, VINSON) OFFICE OF THE GENERAL COUNSEL (KEATING) *KE by CESS*

RE: DOCKET NO. 020611-TP - COMPLAINT OF BELLSOUTH TELECOMMUNICATIONS, INC. REGARDING SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.'S INAPPROPRIATE USE OF LOCAL EXCHANGE NAVIGATION SERVICE (LENS).

AGENDA: 11/05/02 - REGULAR AGENDA - NOTICE OF VOLUNTARY DISMISSAL - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GLC\WP\020611CLOSE.RCM

CASE BACKGROUND

On June 27, 2002, BellSouth Telecommunications, Inc. (BellSouth) filed a Complaint against Supra Telecommunications and Information Systems, Inc. (Supra) regarding Supra's use of the Local Exchange Navigation Service (LENS), which is an operations support system (OSS) used by ALECs for ordering and preordering activities with BellSouth. BellSouth contends that Supra is logging into the system in an abusive manner aimed at causing problems with the system.

On July 18, 2002, Supra filed its Motion to Dismiss BellSouth's complaint, contending therein that the Commission lacks subject matter jurisdiction to address the Complaint because the parties' current interconnection agreement calls for private

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commercial arbitration of any disputes arising out of the agreement. On July 30, 2002, BellSouth filed its Response in Opposition to Supra's Motion to Dismiss, arguing that subject matter jurisdiction exists. By Order No. PSC-02-1191-FOF-TP, issued September 3, 2002, the Motion to Dismiss was denied.

On October 7, 2002, the parties and staff engaged in an informal issues identification meeting in an effort to reach agreement on the issues to be addressed in this proceeding. Thereafter, on October 10, 2002, BellSouth filed a Notice of Voluntary Dismissal of Complaint without Prejudice.

JURISDICTION

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.01(3) and (4)(g), Florida Statutes. Pursuant to Section 364.01 (3), Florida Statutes, the Florida legislature has found that regulatory oversight is necessary for the development of fair and effective competition in the telecommunications industry. To that end, Section 364.01 (4) (g), Florida Statutes, provides, in part, that the Commission shall exercise its exclusive jurisdiction in order to ensure that all providers of telecommunications service are treated fairly by preventing anticompetitive behavior.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge BellSouth's withdrawal of its Complaint against Supra and close this Docket?

RECOMMENDATION: Yes. The Commission should acknowledge BellSouth's withdrawal of its Complaint against Supra, find that the Voluntary Dismissal renders any and all outstanding motions moot, and close this Docket. **(KEATING)**

STAFF ANALYSIS: BellSouth states that it is withdrawing its complaint because Supra indicated at the issues identification meeting that it is no longer using its mechanized log-in process, and because Supra does not currently have access to LENS.

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 withdrawal of its Complaint against Supra, and find that the voluntary dismissal renders any and all outstanding motions moot. Staff also recommends that the Docket should be closed.