



Public Service Commission

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DATE: NOVEMBER 20, 2003

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

FROM: OFFICE OF THE GENERAL COUNSEL (CHRISTENSEN) *PAC*
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (DOWDS, PITTMAN) *J.P.*

RE: DOCKET NO. 021249-TP - COMPLAINT OF SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC. AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. FOR NON-COMPLIANCE WITH COMMISSION ORDER PSC-02-0878-FOF-TP.

AGENDA: 12/02/03 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\021249.RCM

CASE BACKGROUND

On December 18, 2002, Supra Telecommunications and Information Systems, Inc. (Supra) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) seeking relief for BellSouth's non-compliance with the Commission's Order No. PSC-02-0878-FOF-TP, as clarified in Commission Order No. PSC-02-1453-FOF-TP and Provision 2.16.7 of the parties' Interconnection Agreement.

On January 7, 2003, BellSouth filed a Motion to Dismiss Supra's Complaint. On January 14, 2003, Supra filed its Response in Opposition to BellSouth's Motion to Dismiss. On March 20, 2003, a recommendation addressing BellSouth's Motion to Dismiss and Supra's Response in Opposition was filed. The recommendation was deferred from the April 1, 2003, Agenda Conference. At the May 6, 2003, Agenda Conference, the Commission voted to defer ruling on

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Issues 1 through 3 of the recommendation. The Commission also voted to defer the item for at least 60 days to allow the parties time to negotiate and should the parties fail to reach agreement, the recommendation was to be brought back to agenda conference.

Since the parties were unable to negotiate a resolution, the recommendation was scheduled to be considered again at the September 16, 2003, Agenda Conference. The parties requested a brief deferral to the next Agenda Conference. At the September 30, 2003, Agenda Conference, the Commission again voted to defer the matter. On October 2, 2003, Supra filed its Notice of Voluntary Withdrawal without Prejudice.

This recommendation address Supra's Notice of Voluntary Withdrawal without Prejudice.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge Supra's Notice of Voluntary Withdrawal Without Prejudice?

RECOMMENDATION: Yes, the Commission should acknowledge Supra's Notice of Voluntary Withdrawal Without Prejudice. (CHRISTENSEN)

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 Supra's Notice of Voluntary Dismissal Without Prejudice of its Petition. Since no further action is needed, all confidential materials filed in this docket should be returned to the filing party. Further, any pending motions and responses are rendered moot.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission approves staff's recommendation in Issue 1, this docket should be closed.
(CHRISTENSEN)

STAFF ANALYSIS: Should the Commission approve staff's recommendation in Issue 1, there is nothing further in this docket for this Commission to consider. Therefore, this docket should be closed.