

State of Florida



Public Service Commission

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

DATE: May 19, 2005

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

FROM: Office of the General Counsel (Rojas, Fordham) *rjf on FR*
Division of Competitive Markets & Enforcement (Barrett) *meB*
Division of Regulatory Compliance & Consumer Assistance (Vandiver) *AV*

RE: Docket No. 031125-TP – Complaint against BellSouth Telecommunications, Inc. for alleged overbilling and discontinuance of service, and petition for emergency order restoring service, by IDS Telecom LLC.

Docket No. 040488-TP – Complaint of BellSouth Telecommunications, Inc. against IDS Telecom LLC to enforce interconnection agreement deposit requirements.

Docket No. 040611-TP – Request for approval of amendment to interconnection, unbundling, resale, and collocation agreement between IDS Telecom LLC and BellSouth Telecommunications, Inc.

AGENDA: 05/31/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\031125.RCM.DOC

Case Background

On December 23, 2003, IDS Telecom, LLC (IDS) filed its Complaint Against BellSouth Telecommunications, Inc. (BellSouth) for Alleged Overbilling and Discontinuance of Service, and Petition for Emergency Order Restoring Service. On May 21, 2004, BellSouth filed its Complaint Against IDS to Enforce Interconnection Agreement Deposit Requirements, and on

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Date: May 19, 2005

June 25, 2004, IDS filed its Request for Approval of Amendment to its Interconnection Agreement with BellSouth.

On May 11, 2005, IDS and BellSouth filed their Joint Motions for Dismissal With Prejudice of all matters encompassed by these three Dockets. The parties allege that they have jointly settled the issues contained therein.

Discussion of Issues

ISSUE 1: Should the Commission grant the Joint Motions for Dismissal With Prejudice filed by IDS and BellSouth?

RECOMMENDATION: Yes. The Commission should grant the Joint Motions for Dismissal With Prejudice filed by IDS and BellSouth. In addition, the Commission should find that the voluntary Dismissal renders any and all outstanding motions moot, and all documents filed under claim of confidentiality should be returned to the filing party. Therefore, these Dockets should be closed. **(Fordham, Rojas)**

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 grant the Joint Motions for Dismissal With Prejudice filed by IDS and BellSouth, and find that the voluntary dismissal renders any and all outstanding motions moot. Additionally, all confidential materials filed in these Dockets should be returned to the filing party and these Dockets should be closed.