

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** August 18, 2005

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

**FROM:** Division of Competitive Markets & Enforcement (Dowds, Lee, Mailhot, Salak)  
Division of Economic Regulation (Maurey)  
Office of the General Counsel (Susac)

**RE:** Docket No. 050059-TL – Petition to reform unbundled network element (UNE) cost of capital and depreciation inputs to comply with Federal Communications Commission's guidance in Triennial Review Order, by Verizon Florida Inc.

**AGENDA:** 08/30/05 – Regular Agenda – Interested Parties May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Deason

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\050059.RCM.DOC

### Case Background

On January 25, 2005, Verizon Florida Inc. (Verizon) filed a Petition to Change the Cost of Capital and Depreciation Inputs (Petition) that were approved and used in calculating Verizon's UNE rates.<sup>1</sup> On June 9, 2005, our staff filed a recommendation addressing the merits contained in Verizon's Petition for the June 21, 2005 Agenda Conference. After much discussion at the June 21, 2005 Agenda Conference, the Commission decided to set the matter for hearing and Order No. PSC-05-0737-PCO-TL was issued on July 11, 2005. Shortly thereafter, on July 19, 2005, Verizon filed a Notice of Voluntary Dismissal of its Petition.

<sup>1</sup> Along with its petition, Verizon also filed testimony.

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### Discussion of Issues

**Issue 1:** Should the Commission acknowledge Verizon's Notice of Voluntary Dismissal?

**Recommendation:** Yes. (SUSAC)

**Staff Analysis:** In Verizon's Notice, it requests that the Commission acknowledge its request to voluntarily dismiss its own Petition, and administratively close the docket. Verizon argues that a plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lundsford, 314 So.2d 578, 579 (Fla. 1975)

Staff agrees the law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lundsford, 314 So. 2d 578, 579 (Fla. 1975). Staff also notes that it is well-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 the Commission acknowledge Verizon's Notice of Voluntary Dismissal of its Petition to reform unbundled network element (UNE) cost of capital and depreciation inputs.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. The docket should be closed upon acknowledging Verizon's Voluntary Dismissal. (SUSAC)

**Staff Analysis:** The docket should be closed upon acknowledging Verizon's Voluntary Dismissal, and no further action from the Commission is needed.