

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

RECEIVED--FPSC

FEB 10 AM 10:38

COMMISSION
CLERK

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

DATE: February 16, 2006

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

FROM: Office of the General Counsel (Fordham) *C.J.F. Puffin*
Division of Competitive Markets & Enforcement (Barrett, Dowds, King) *MCB*

RE: Docket No. 030829-TP – Complaint of Florida Digital Network, Inc. d/b/a FDN Communications against BellSouth Telecommunications, Inc. for resolution of certain billing disputes and enforcement of unbundled network element (UNE) orders and interconnection agreements.

AGENDA: 02/28/06 – Regular Agenda – Post-Hearing Notice of Voluntary Dismissal – Participation at the discretion of the Commission

COMMISSIONERS ASSIGNED: ~~Deason~~ *All Commissioners hmf*

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030829.RCM.DOC

Case Background

On August 18, 2003, Florida Digital Network, Inc. d/b/a FDN Communications (FDN) filed a Complaint for Resolution of Certain Billing Disputes and Enforcement of UNE Orders and Interconnection Agreements with BellSouth Telecommunications, Inc. (BellSouth). On September 3, 2003, BellSouth filed its Answer and Counterclaim. By Order No. PSC-04-0121-PCO-TP, issued February 2, 2004, (Order Establishing Procedure), a procedural schedule was established for this matter. The administrative hearing was held on October 6, 2004. Post-hearing briefs were filed November 5, 2004, but the parties then entered into renewed

DOCUMENT NUMBER-DATE

01180 FEB 10 06

FPSC-COMMISSION CLERK

Docket No. 030829-TP
Date: February 16, 2006

negotiations and a final order was not issued, pending the results of those negotiations. On January 27, 2006, FDN filed its Notice of Withdrawal of Complaint.

Discussion of Issues

Issue 1: Should the Commission acknowledge FDN's Notice of Withdrawal of its Complaint?

Recommendation: Yes. The Commission should acknowledge FDN's Notice of Withdrawal of its Complaint. In addition, the Commission should find that the voluntary withdrawal renders any and all outstanding motions moot, and that any confidential documents filed in this matter be returned to the submitting party. (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 FDN's Notice of Withdrawal of its Complaint, and find that the voluntary dismissal renders any and all outstanding motions moot. Additionally, the Commission should find that all confidential materials filed in this Docket be returned to the filing party.

Docket No. 030829-TP
Date: February 16, 2006

Issue 2: Should this docket be closed?

Recommendation: Yes. With the withdrawal of the Complaint, there are no further matters for this Commission to adjudicate in this Docket and, therefore, it should be closed. (Fordham)

Staff Analysis: With the withdrawal of the Complaint, there are no further matters for this Commission to adjudicate in this Docket and, therefore, it should be closed.