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DATE: March 9, 2006

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

FROM: Office of the General Counsel (Teitzman) *M. P. [Signature]*
Division of Competitive Markets & Enforcement (Bulecza-Banks, Casey) *PS*

RE: Docket No. 020507-TL – Complaint of Florida Competitive Carriers Association against BellSouth Telecommunications, Inc. regarding BellSouth's practice of refusing to provide FastAccess Internet Service to customers who receive voice service from a competitive voice provider, and request for expedited relief.

AGENDA: 03/21/06 *4/4/06 (16)* – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: Deason

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\020507.RCM.DOC

Case Background

On June 12, 2002, the Florida Competitive Carriers Association (FCCA) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) and a Request for Expedited Relief seeking relief from BellSouth's practice of refusing to provide its FastAccess service to customers who receive voice service from an Competitive Local Exchange Carrier (CLEC).¹ By

¹ The Commission previously required BellSouth to make available BellSouth FastAccess Internet service to voice service customers of Florida Digital Network, Inc. (FDN) and Supra Telecommunications and Information Systems, Inc. (Supra). See, In re: Petition by Florida Digital Network, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection and Resale Agreement with BellSouth Telecommunications, Inc. Under the Telecommunications Act of 1996 Order No. PSC-02-0765-FOF-TP, issued June 5, 2002, in Docket No. 010098-TP.

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Order No. PSC-02-0935-PCO-TL, issued July 12, 2002, the request for expedited relief was denied. On July 21 and 22, 2003, an administrative hearing was held in the above matter. On November 20, 2003, a recommendation was filed for consideration at the December 2, 2003, Agenda Conference. At the December 2, 2003, Agenda Conference, the post hearing recommendation was deferred pending the appeals of the FDN Order and Supra Reconsideration Order.

On March 25, 2005, the FCC issued a Memorandum Opinion and Order and Notice of Inquiry in *BellSouth Telecommunications, Inc. Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services by Requiring BellSouth to Provide Wholesale or Retail Broadband Services to Competitive LEC UNE Voice Customers*.² The FCC held that state commission decisions requiring BellSouth make available BellSouth FastAccess Internet service to CLEC voice service customers are inconsistent with the Telecommunications Act and FCC regulations.

On June 14, 2005, the United States District Court, Northern District of Florida, Tallahassee Division issued its Order and Judgment vacating the pertinent portions of the FDN Order requiring BellSouth make available BellSouth FastAccess Internet service to FDN voice service customers.³ On July 18, 2005, the United States District Court, Northern District of Florida, Tallahassee Division issued its Order and Judgment vacating the pertinent portions of the Supra Reconsideration Order requiring BellSouth make available BellSouth FastAccess Internet service to Supra voice service customers.⁴

On January 13, 2006, BellSouth filed its Motion to Close Docket. In its Motion, BellSouth requests, in light of the FCC and District Court's decisions, that the Commission enter an order closing this docket and dismissing any outstanding CLEC claims. The Commission did not receive any responses to BellSouth's Motion.

(FDN Order) and In re: Petition by BellSouth Telecommunications, Inc. for Arbitration of Certain Issues in Interconnection Agreement with Supra Telecommunications and Information Systems, Inc., Order No. PSC-02-0878-FOF-TP, issued July 1, 2002, in Docket No. 001305-TP (Supra Reconsideration Order).

² WC Docket No. 03-251, FCC 05-78, 20 FCC Rcd 6830.

³ *BellSouth Communications Inc., v. Florida Digital Network, Inc., et al.*, No. 4:03cv212-RH (Fla. N. Dist. June 14, 2005)

⁴ *BellSouth Telecommunications, Inc. v. Supra Telecommunications and Information Systems, Inc. et al.*, (2005 U.S. Dist. LEXIS 35517)

Discussion of Issues

Issue 1: Should the Commission grant BellSouth's Motion to Close Docket?

Recommendation: Yes. In light of the decisions by the FCC and United States District Court, Northern District of Florida, staff recommends the Commission grant BellSouth's Motion to Close Docket and dismiss FCCA's Complaint. The FCC has held that a state commission may not require ILECs to make available internet service to CLEC voice service customers because it is inconsistent with the Telecommunications Act and FCC regulations. Accordingly, staff believes the Commission cannot grant the relief requested by FCCA in its Complaint. (TEITZMAN)

Staff Analysis: In light of the decision by the FCC and United States District Court, Northern District of Florida, staff recommends the Commission grant BellSouth's Motion to Close Docket and dismiss FCCA's Complaint. The FCC has held that a state commission may not require ILECs to make available internet service to CLEC voice service customers because it is inconsistent with the Telecommunications Act and FCC regulations. Accordingly, staff believes the Commission cannot grant the relief requested by FCCA in its Complaint.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed. (TEITZMAN)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.