

State of Florida



Public Service Commission

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DATE: October 12, 2006

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

FROM: Office of the General Counsel (West) *FBW PKW*
Division of Competitive Markets & Enforcement (Lee) *Do Fr PSL*

RE: Docket No. 040530-TP – Petition for expedited ruling requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to file for review and approval any agreements with CLECs concerning resale, interconnection, or unbundled network elements, by Florida Competitive Carriers Association, AT&T Communications of the Southern States, LLC d/b/a AT&T, MCI metro Access Transmissions Services LLC, and MCI WorldCom Communications, Inc.

AGENDA: 10/24/06 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040530.RCM.DOC

Case Background

Petitioners in this case are the following: Florida Competitive Carriers Association, AT&T Communications of the Southern States, LLC, MCI metro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (collectively, Joint CLECs). Respondents are BellSouth Telecommunications, Inc. (BellSouth) and Verizon Florida, Inc. (Verizon) (collectively, the ILECs). On June 7, 2004, the Joint CLECs filed a petition requesting that Respondent ILECs be required to file with the Commission for review certain agreements (Petition). Specifically, the agreements to be filed were those agreements between the ILECs

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and other carriers that had not been publicly filed with the Commission that address terms, conditions, or pricing in Florida for resale, interconnection, or Unbundled Network Elements (UNEs). Included in this definition of "agreements" were the full content of any understandings, oral agreements, or side agreements that may have a bearing on such agreements. The Petition also requested that the Commission enter an order asserting its jurisdiction over commercially negotiated agreements under state law, federal law, or both. Finally, the Petition requested that the ILECs be required to make all commercially negotiated agreements publicly available and posted on the Commission's website.

On June 28, 2004 and July 2, 2004, respectively, BellSouth and Verizon each filed a Response in Opposition and Motion to Dismiss to the Petition. BellSouth and Verizon do not dispute any facts raised by the Joint CLECs in the Petition.

The Joint CLECs filed responses to both the BellSouth and Verizon Motions to Dismiss on July 6 and July 14, 2004, respectively.

On August 20, 2004, the Federal Communications Commission (FCC) released its *Order and Notice of Proposed Rulemaking (FCC Interim Order and NPRM, FCC 04-179), In the Matter of Unbundled Access to Network Elements* (WC Docket No. 04-313) and *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338). In the *Interim Order and NPRM*, the FCC solicited comment on alternative unbundling rules to respond to the U.S. Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decision in *United States Telecom Ass'n v. FCC*, 360 U.S. App. D.C. 202, 359 F. 3d 554 (*USTA II*). Among other things, the *Interim Order and NPRM* incorporated the requests filed by SBC and BellSouth for a declaratory ruling on whether ILECs are required to file non-251 agreements, BellSouth's petition requesting forbearance from enforcement of Section 252 with respect to non-251 commercially negotiated agreements, and a BellSouth Emergency Petition for Declaratory Ruling and Preemption of State Action.

By Order No. PSC-04-1072-PCO-TP, issued November 3, 2004, the Commission determined that the issues in the Joint CLECs' Petition were essentially the same issues to be addressed in the proceedings arising from the FCC's *Interim Order and NPRM*. Therefore, the Commission held that this Docket No. 040530-TP would be held in abeyance until a final decision was reached in the FCC's proceedings.

On February 4, 2005, the FCC released its *Triennial Review Remand Order (TRRO)*¹ in which it addressed the issues remanded in *USTA II*. The FCC indicated that it will address the issues, which are the subject of the Joint CLECs' Petition, in subsequent orders.

On September 20, 2006, the Competitive Carriers of the South, Inc. (CompSouth)(formerly known as Florida Competitive Carriers Association), AT&T Communications of the Southern States, LLC (AT&T), and MCI metro Access Transmission Services, LLC (on its own behalf and as successor to MCI WorldCom Communications, Inc.) filed a Notice of Withdrawal. In their withdrawal, the Joint CLECs (Petitioners) assert that they withdraw, without prejudice, the Petition filed in this Docket on June 7, 2004.

¹ *In Re: Unbundled Access to Network Elements*, WC Docket No. 04-313, CC Docket, No. 01-338.

This recommendation addresses the Joint CLECs' Notice of Withdrawal.

The Commission is vested with jurisdiction pursuant to Section 252 of the Telecommunications Act of 1996 and Section 364.162, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission acknowledge the Joint CLECs' Notice of Withdrawal filed on September 20, 2006, in this docket?

Recommendation: Yes. The Commission should acknowledge the Joint CLECs' Notice of Withdrawal without prejudice. (West, P. Lee)

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 the Joint CLECs' Notice of Withdrawal without prejudice and find that the voluntary withdrawal 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.

Issue 2: Should this Docket be closed?

Recommendation: Yes. With the withdrawal of the Petition, there are no further matter for this Commission to adjudicate in this Docket and, therefore, it should be closed. (West, P. Lee)

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