

State of Florida



Public Service Commission

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

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

DATE: August 29, 2007

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Wiggins) *picw*
Division of Competitive Markets & Enforcement (Dowds) *oe*
prts

RE: Docket No. 050881-TP – Complaint by DIECA Communications, Inc. d/b/a Covad Communications Company against BellSouth Telecommunications, Inc. for alleged breaches of interconnection agreement.

AGENDA: 09/11/07 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050881.RCM.DOC

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Case Background

On November 17, 2005, DIECA Communications, Inc., d/b/a Covad Communications Company (Covad) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged breach of their interconnections agreement. In addition to the instant complaint, Covad concurrently filed with us a Motion for Stay Pending FCC Action (motion for stay).

On December 5, 2005, BellSouth filed an Agreed Motion for Extension of Time (Agreed Motion). On July 24, 2007, Covad and Bellsouth (now AT&T) executed a new interconnection agreement. Therefore, Covad dismisses the complaint with prejudice and request the Commission acknowledge their Notice of Voluntary Dismissal, with prejudice.

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Discussion of Issues

Issue 1: Should the Commission approve Covad's Notice for Voluntary Dismissal with prejudice

Recommendation: Yes. The Commission should acknowledge Covad's Notice of Voluntary Dismissal With Prejudice. (WIGGINS)

Staff Analysis: The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So2d 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 So2d 68, 69 (Fla. 1978). Therefore, staff recommends that the Commission acknowledge Covad's Notice of Voluntary Dismissal With Prejudice.

Issue 2: Should this docket be closed?

Recommendation: Yes.

Staff Analysis: Since Covad has withdrawn their complaint, staff recommends the Commission grant their request for Voluntary Dismissal with prejudice and that this docket be closed