

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: September 9, 2004

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

FROM: Office of the General Counsel (Susac)
Division of Competitive Markets & Enforcement (Pruitt)

RE: Docket No. 030339-TP – Petition of Allegiance Telecom of Florida, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc.

AGENDA: 09/21/04 – Regular Agenda – Parties May Participate – Final Order

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\030339.RCM.DOC

Case Background

On April 11, 2003, Allegiance Telecom of Florida, Inc. (Allegiance) filed for arbitration of certain terms and conditions of a proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. (BellSouth). On May 6, 2003, BellSouth filed its Response. An issue identification meeting was held on July 8, 2003. A Revised Order Establishing Procedure was issued on August 13, 2003. This Order set the Prehearing for November 7, 2003, and the Hearing for December 9 – 10, 2003.

On November 6, 2003, the parties notified staff that they had reached an agreement on all issues and would no longer need to proceed with the arbitration. Despite reaching an agreement, no interconnection agreement was filed. Therefore, on May 27, 2004, Commission counsel sent a certified letter to counsel for Allegiance asking the company to file the agreement or risk having the docket closed for lack of activity. On August 2, 2004, Commission counsel received a letter from Allegiance stating, “. . . Allegiance believes that considerations of administrative efficiency support closing Docket 030339-TP at this time.”

This is staff’s recommendation to close the docket.

Discussion of Issues

Issue 1: Should the Commission acknowledge Allegiance Telecom of Florida, Inc.'s letter as a request for a voluntary dismissal stating administrative efficiencies for closing the docket?

Recommendation: Yes. The Commission should acknowledge Allegiance's letter as a request for a voluntary dismissal. **(SUSAC, PRUITT)**

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).

As stated above, Allegiance's letter fully supports closing the docket, and staff believes the letter serves the same purpose as a voluntary dismissal. Therefore, staff recommends that the Commission acknowledge Allegiance's letter that supports closing the docket.

Issue 2: Should this Docket be closed?

Recommendation: Yes. There is nothing further in this Docket for this Commission to consider, and the Docket should be closed. **(SUSAC)**

Staff Analysis: There is nothing further in this Docket for this Commission to consider. Therefore, the Docket should be closed.