

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: April 21, 2005

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

FROM: Office of the General Counsel (Teitzman)
Division of Competitive Markets & Enforcement (Moss, Barrett)

RE: Docket No. 040353-TP – Petition to review and cancel, or in the alternative immediately suspend or postpone, BellSouth Telecommunications, Inc.'s PreferredPack Plan tariffs, by Supra Telecommunications and Information Systems, Inc.

AGENDA: 05/03/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040353.RCM.DOC

Case Background

On April 20, 2004, Supra Telecommunications & Information Systems, Inc. (Supra) filed its Petition to Review and Cancel BellSouth's Promotional Offering Tariffs offered in conjunction with its new flat rate service known as the PreferredPack Plan. On May 17, 2004, BellSouth Telecommunications, Inc. (BellSouth) filed its Answer to Supra's Petition. On May 27, 2004, Order No. PSC-04-0549-PCO-TP was issued to initiate an expedited discovery procedure.

On July 27, 2004, Supra filed a Motion for a Summary Final Order, contending that there existed no genuine issues of material fact. BellSouth filed its response on September 24, 2004. Supra's Motion was denied by Order No. PSC-04-0975-PCO-TP, issued October 8, 2004.

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On November 23, 2004, Supra and BellSouth filed their Joint Motion for Abeyance. By Order No. PSC-04-1215-PCO-TP, issued December 8, 2004, the Joint Motion was granted.

On March 24, 2005, Supra filed a Notice of Voluntary Withdrawal without Prejudice. Supra's Voluntary Withdrawal is addressed in staff's recommendation.

Discussion of Issues

ISSUE 1: Should the Commission acknowledge Supra's Notice of Voluntary Withdrawal, without Prejudice, of its Petition?

RECOMMENDATION: Yes. The Commission should acknowledge Supra's Notice of Voluntary Withdrawal of its Petition. In addition, the Commission should find that the voluntary withdrawal renders any and all outstanding motions moot. (TEITZMAN, MOSS)

STAFF ANALYSIS: The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lundsford, 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 Supra's Notice of Voluntary Withdrawal of its Petition to Review and Cancel BellSouth's Promotional Offering Tariffs offered in conjunction with its new flat rate service known as the PreferredPack Plan without Prejudice, and find that the voluntary dismissal renders any and all outstanding motions moot.

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. (TEITZMAN)

STAFF ANALYSIS: There is nothing further in this docket for this Commission to consider. Therefore, the docket should be closed.