

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: October 6, 2005

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

FROM: Office of the General Counsel (Rojas, McKay)
Division of Competitive Markets & Enforcement (Bates, Dowds)

RE: Docket No. 040779-TP – Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. and Network Telephone Corporation by Z-Tel Communications, Inc.

AGENDA: 10/18/05 – 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\040779.RCM.DOC

Case Background

Z-Tel Communications, Inc.'s (Z-Tel) existing interconnection agreement with BellSouth Telecommunications, Inc. (BellSouth) in Florida became effective on April 18, 2003 and expired on September 11, 2004. In the course of discussions between the parties for a successor agreement, Z-Tel opted to adopt a new agreement rather than to attempt to renegotiate terms of their existing agreement.

On July 23, 2004, Z-Tel filed its Notice of Adoption of the interconnection agreement between BellSouth and Network Telephone Corporation (Network). On August 5, 2004, BellSouth filed a letter in opposition to Z-Tel's Notice of Adoption. On August 25, 2004, Z-Tel

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filed a reply to BellSouth's letter in opposition in which they addressed the arguments raised by BellSouth. On September 2, 2004, BellSouth filed a letter accompanying a copy of the FCC's Interim Rules Order. On September 7, 2004, Z-Tel filed a response letter to BellSouth's letter and filing of the FCC's Interim Rules Order.

By Order No. PSC-05-0158-PAA-TP, issued February 9, 2005, the Commission accepted the Notice of Adoption. Subsequently, on March 2, 2005, BellSouth filed a protest of the Commission's Order and requested the matter be set for hearing.

Staff conducted a series of conference calls with the parties aimed at resolving the dispute. The parties agreed to a stipulation of the facts and reached agreement that an abbreviated procedure consistent with Section 120.57(2), Florida Statutes, would be appropriate. In view of the parties' Joint Stipulation of Facts, an abbreviated schedule was approved by Order No. PSC-05-0846-PCO-TP, issued August 18, 2005.

On September 2, 2005, BellSouth filed a Joint Motion for Withdrawal, wherein BellSouth notes that the parties have reached agreement. As such, BellSouth withdraws its protest of Order No. PSC-05-0158-PAA-TP, and Trinsic Communications (formerly known as Z-Tel Communications) withdraws its original Notice of Adoption, which initiated this Docket. The parties request that this proceeding be terminated.

Discussion of Issues

ISSUE 1: Should the Commission acknowledge the Joint Notice of Withdrawal and close this Docket?

RECOMMENDATION: Yes. (ROJAS, McKAY)

STAFF ANALYSIS: The parties indicate that they have reached an agreement whereby they will continue to operate under the terms of their current interconnection agreement pending the outcome of Docket No. 041269-TP, Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc. In withdrawing its protest of the Commission's Order, BellSouth also withdraws its request for a hearing in this matter. Furthermore, the petitioner, Trinsic (f/k/a Z-Tel), is withdrawing its original notice of adoption.

Withdrawal of the protest negates the need for a hearing in this matter. Furthermore, the law is clear that the petitioner'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). Since there are no remaining issues in dispute between the parties in this docket, staff recommends that the Joint Notice of Withdrawal be acknowledged and this Docket be closed.