

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: December 8, 2005

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

FROM: Office of the General Counsel (L. Fordham)
Division of Competitive Markets & Enforcement (Kennedy, Marsh)

RE: Docket No. 041114-TP – Complaint of XO Florida, Inc. against BellSouth Telecommunications, Inc. for alleged refusal to convert circuits to UNEs; and request for expedited processing.

AGENDA: 12/20/05 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: Deason, Edgar

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\041114.RCM.DOC

Case Background

On September 22, 2004, XO Florida, Inc. (XO) filed a Complaint Against BellSouth Telecommunications, Inc. (BellSouth) for refusal to convert circuits to UNEs. On October 6, 2004, BellSouth filed its Response to XO's Complaint. On November 18, 2004, Order No. PSC-04-1147-PCO-TP was issued, setting the matter for hearing and establishing the procedures to be followed in preparation for said hearing.

Following extensive discovery, the parties convened for hearing on May 19, 2005, but announced at that time that they had reached a settlement in principle and requested that the matter be continued to allow time for drafting and resolving details of the settlement. On October 18, 2005, XO filed a notice announcing that the parties had reached a settlement on all issues which are a part of this Docket, and XO voluntarily dismissed its Complaint with prejudice, requesting that the Docket be closed.

Discussion of Issues

ISSUE 1: Should the Commission acknowledge XO's voluntary dismissal of its Complaint?

RECOMMENDATION: Yes. The Commission should acknowledge XO's voluntary dismissal of its Complaint. In addition, the Commission should find that the voluntary dismissal renders any and all outstanding motions moot. **(L. Fordham)**

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 XO's voluntary dismissal of its Complaint, and find that the voluntary dismissal 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. XO's voluntary dismissal is with prejudice and with a specific request that the Docket be closed. Therefore, the Docket should be closed. **(Fordham)**

STAFF ANALYSIS: XO's voluntary dismissal is with prejudice and with a specific request that the Docket be closed. Therefore, the Docket should be closed.