

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: March 23, 2006

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

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

RE: Docket No. 041269-TP – Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.

AGENDA: 04/04/06 – Regular Agenda – Posthearing Procedural Decision – Parties May Participate

COMMISSIONERS ASSIGNED: Edgar, Deason, Arriaga

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\041269.RCM.DOC

Case Background

On November 1, 2004, BellSouth filed a Petition asking the Commission to determine what changes are required in existing, approved interconnection agreements between BellSouth and CLECs in Florida as a result of changes in law from recent FCC and federal appellate court decisions.

A final administrative hearing was conducted on November 2-4, 2005 before a panel of three Commissioners.

On February 27, 2006, after the Commission's initial vote in this Docket, Supra Telecommunications and Information Systems, Inc. (Supra), Florida Digital Network, Inc. d/b/a FDN Communications, Inc. (FDN), Nuvox Communications, Inc./NewSouth Communications Corp. (Nuvox/NewSouth), Xspedius Communications, LLC (Xspedius), and DIECA Communications, Inc. d/b/a Covad Communications Co. (Covad) (collectively "Joint Petitioners") filed a Joint Petition for Rehearing and Request for Expedited Treatment (Joint Petition). The Joint Petitioners argue that the Commission committed a procedural error in only assigning a panel of three Commissioners to hear this matter. The Joint Petitioners request the Commission implement any and all such relief as may be necessary and appropriate to remedy this alleged error.

On March 3, 2006, the Joint Petitioners filed their Notice of Voluntary Dismissal Without Prejudice (Dismissal Notice) of their Joint Petition. The Joint Petitioners request an order be entered by the Commission accepting the voluntary dismissal of their Joint Petition without prejudice, and acknowledging that the argument set forth in the Petition was timely raised and preserved in the record for purposes of appeal.

On March 7, 2006, BellSouth filed a letter in response to the Joint Petitioners' Dismissal Notice. In its letter, BellSouth states that it does not object to the voluntary dismissal. However, BellSouth further states that it does object to the aspect of the Dismissal Notice that requests the Commission acknowledge the existence of arguments that are withdrawn.

Staff notes that on March 15, 2006, Supra filed its Motion for Reconsideration. In its Motion for Reconsideration, Supra once again requests the Commission address whether the Commission committed a procedural error in assigning three Commissioners to address this matter. This argument, and the Motion for Reconsideration, will be considered at a later date.

Discussion of Issues

ISSUE 1: Should the Commission acknowledge the Joint Petitioner's Notice of Voluntary Dismissal Without Prejudice of their Petition for Rehearing and Request for Expedited Treatment?

RECOMMENDATION: Yes. The Commission should acknowledge the Joint Petitioner's Notice of Voluntary Dismissal Without Prejudice of their Petition for Rehearing and Request for Expedited Treatment. Additionally, in light of Supra's Motion for Reconsideration, the Commission should defer consideration of the timeliness of Supra's argument that the Commission erred in using a three Commissioner panel until it considers Supra's Motion for Reconsideration. (TEITZMAN)

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 the Joint Petitioner's Notice of Voluntary Dismissal Without Prejudice of their Joint Petition for Rehearing and Request for Expedited Treatment. Additionally, in light of Supra's Motion for Reconsideration, the Commission should defer consideration of the timeliness of Supra's argument that the Commission erred in using a three Commissioner panel until it considers Supra's Motion for Reconsideration.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open pending Commission approval of the final arbitration agreements in accordance with §252 of the Telecommunications Act of 1996. (TEITZMAN)

STAFF ANALYSIS: This docket should remain open pending Commission approval of the final arbitration agreements in accordance with §252 of the Telecommunications Act of 1996.