

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** October 12, 2006

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

**FROM:** Office of the General Counsel (West, Teitzman)  
Division of Competitive Markets & Enforcement (Vinson)

**RE:** Docket No. 041338-TP – Joint petition by ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom d/b/a Grapevine; Birch Telecom of the South, Inc. d/b/a Birch Telecom and d/b/a Birch; DIECA Communications, Inc. d/b/a Covad Communications Company; Florida Digital Network, Inc.; LecStar Telecom, Inc.; MCI Communications, Inc.; and Network Telephone Corporation ("Joint CLECs") for generic proceeding to set rates, terms, and conditions for hot cuts and batch hot cuts for UNE-P to UNE-L conversions and for retail to UNE-L conversions in BellSouth Telecommunications, Inc. service area.

Docket No. 040301-TP – Complaint of Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc.

**AGENDA:** 10/24/06 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** Edgar, Deason, Arriaga

**PREHEARING OFFICER:** Arriaga

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\041338.RCM.DOC

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### Case Background

On June 23, 2004, Supra Telecommunications and Information Systems, Inc. (Supra) filed its Amended Petition for Arbitration with BellSouth Telecommunications, Inc. (BellSouth).

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BellSouth filed its Answer and Response on July 21, 2004. The matter was then set for a two-day hearing (December 1-2, 2004) and later reduced to a one-day hearing scheduled for December 2, 2004.

On November 23, 2004, a Petition was filed by the following: ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom d/b/a Grapevine; Birch Telecom of the South, Inc. d/b/a Birch Telecom and d/b/a Birch; DIECA Communications, Inc. d/b/a Covad Communications Company; Florida Digital Network, Inc. d/b/a FDN Communications; LecStar Telecom, Inc.; MCI Communications, Inc.; and Network Telephone Corporation (Joint CLECs). The Petition requested that the Commission establish a generic proceeding to set rates, terms and conditions for hot cuts and batch hot cuts for UNE-P to UNE-L conversions and for retail to UNE-L conversions in BellSouth Telecommunications, Inc.'s service area.

On November 29, 2004, BellSouth, among other things, asked the Commission that Docket No. 040301-TP be consolidated with Docket No. 041338-TP. By Order No. PSC-05-0157-PCO-TP, issued February 8, 2005, the dockets were consolidated.

On April 19, 2005, by a conference call with the parties, the Prehearing Officer determined which issues would be addressed in hearing and those that would be addressed informally. Specifically, Issues 1-23 were scheduled to be addressed in the October 2005 (Phase I) hearing and Issues 24-26 would be resolved informally.

On September 30, 2005, on behalf of all parties, BellSouth filed a Joint Motion to Approve Stipulation. By Order No. PSC-05-1131-PAA-TP, issued November 10, 2005, and consummated on December 6, 2005, the Commission approved the parties' Joint Stipulation, which addressed most of the issues from Phase I.

Since that time parties have worked informally to resolve all of the remaining issues. By letter dated September 29, 2006, parties indicate that in Docket No. 041338-TP all of the remaining issues have been resolved, are currently under resolution or have been withdrawn for both phases of this consolidated proceeding. Staff also notes that there are no pending issues in Docket No. 040301-TP.

This recommendation addresses whether the dockets of this consolidated proceeding should be closed.

The Commission is vested with jurisdiction in this matter pursuant to Sections 364.161 and 364.162, Florida Statutes.

### **Discussion of Issues**

**Issue 1:** Should Docket Nos. 041338-TP and 040301-TP be closed?

**Recommendation:** Yes. With the resolution of all of the remaining issues, there are no further matters for this Commission to adjudicate in this consolidated proceeding and, therefore, Docket Nos. 041338-TP and 040301-TP should be closed. (West)

**Staff Analysis:** As stated previously, parties filed a letter on September 29, 2006. In this letter parties indicate that there are no pending issues to be addressed by the Commission. Parties state that their letter of agreement comes with BellSouth's commitment to continue collaborating with CLECs in the resolution of any implementation issues that may arise regarding the issues presented in this proceeding. Further, the parties agree that the dismissal of the dockets cannot be used as a defense against any claim a party might bring in a subsequent proceeding regarding matters not resolved by the hot cut settlement agreement or the implementation referred to above or BellSouth's disconnect fees. Instead, the agreement provides that parties retain any other available defense to such a proceeding. With this agreement, staff believes that there is nothing further for the Commission to adjudicate and recommends that Docket Nos. 041338-TP and 040301-TP be closed.