

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-

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**DATE:** November 8, 2006

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

**FROM:** Office of the General Counsel (Scott, Tan)  
Division of Competitive Markets & Enforcement (Barrett, Higgins)

**RE:** Docket No. 060366-TP – Complaint regarding BellSouth Telecommunications, Inc.'s failure to offer its promotional tariff offerings for resale and request for relief, by Supra Telecommunications and Information Systems, Inc.

**AGENDA:** 11/21/06 – Regular Agenda – Notice of Voluntary Dismissal With Prejudice – Participation at the Discretion of the Commission

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Carter

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\060366.RCM.DOC

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### Case Background

On May 1, 2006, Supra Telecommunications and Information Systems, Inc. (Supra) filed a complaint regarding BellSouth Telecommunications, Inc.'s (BellSouth) failure to offer its promotional tariff offerings for resale. On May 22, 2006, BellSouth filed its Answer. Pursuant to Order No. PSC-06-0738-PCO-TP, issued August 31, 2006, certain procedural dates were set for this matter.

On September 21, 2006, the parties filed a Joint Motion for Extension of Time to extend the time to file direct testimony until October 13, 2006. Order No. PSC-06-0799-PCO-TP granting the extension was issued on September 25, 2006.

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On October 12, 2006, the parties filed a Joint Motion for Stay in which they requested that the Commission stay proceedings in this docket for a period of 30 days from the date an Order is issued. The parties indicated that they were involved in settlement negotiations. An Order Granting Joint Motion for Stay was issued on October 13, 2006.<sup>1</sup>

On October 19, 2006, Supra filed a Notice of Voluntary Dismissal With Prejudice, which this recommendation addresses.

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<sup>1</sup> See Order No. PSC-06-0858-PCO-TP.

### **Discussion of Issues**

**ISSUE 1:** Should the Commission acknowledge Supra Telecommunications and Information Systems, Inc.'s Notice of Voluntary Dismissal With Prejudice?

**RECOMMENDATION:** Yes. The Commission should acknowledge Supra's voluntary dismissal of its Complaint with prejudice.

**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). In its Notice of Voluntary Dismissal With Prejudice, Supra does not indicate the basis for dismissal; however, staff believes that the parties may have resolved their dispute.<sup>2</sup> Therefore, staff recommends that the Commission acknowledge Supra's Notice of Voluntary Dismissal With Prejudice. No other party has filed for intervention, and staff believes no party would be prejudiced by acknowledging the voluntary dismissal.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. With Supra's voluntary dismissal of its Complaint, no further issues remain for the Commission to address. Therefore, this docket should be closed.

**STAFF ANALYSIS:** With Supra's voluntary dismissal of its Complaint, no further issues remain for the Commission to address. Therefore, this docket should be closed.

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<sup>2</sup> Staff notes that the resolution between the parties is confidential.