

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: April 26, 2007

TO: Commission Clerk (Cole)

FROM: Division of Competitive Markets & Enforcement (Dowds)
Office of the General Counsel (Teitzman)

RE: Docket No. 040601-TP – Petition by DIECA Communications, Inc. d/b/a Covad Communications Company for arbitration of issue resulting from interconnection negotiations with BellSouth Telecommunications, Inc., and request for expedited processing.

AGENDA: 05/08/07 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040601.RCM.DOC

Case Background

On June 23, 2004, DIECA Communications, Inc. d/b/a Covad Communications Company (Covad) filed its Petition for Arbitration and Request for Expedited Processing of an issue resulting from interconnection negotiations with BellSouth Telecommunications, Inc. (AT&T Florida).¹ Covad requested we resolve the parties' dispute regarding line sharing rates, terms and conditions. On July 19, 2004, AT&T Florida filed its Response to Covad's Arbitration

¹ Order No. PSC-07-0114-FOF-TP acknowledged the name change from BellSouth Telecommunications, Inc. to BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast.

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Petition in which it raised additional issues and requested this proceeding be treated as a change of law dispute rather than an arbitration.

On October 26, 2004, Order No. PSC-04-1044-FOF-TP (Line Sharing Order) was issued which required AT&T Florida to provide Covad access to new line sharing arrangements pursuant to the parties' interconnection agreement through its term ending December 19, 2004. On November 10, 2004, AT&T Florida filed its Motion for Reconsideration and Clarification of Order No. PSC-04-1044-FOF-TP. On November 12, 2004, Covad filed its Response to AT&T Florida's Motion for Reconsideration and Clarification and Cross-Motion for Reconsideration and Request for Oral Argument. On January 27, 2005, Order No. PSC-05-0109-FOF-TP was issued denying AT&T Florida's Motion for Reconsideration and Covad's Cross-Motion for Reconsideration.

Staff has held periodic conference calls with the parties to discuss the status of this case. During these calls, the parties notified staff that negotiations were continuing and jointly requested that the docket remain open. On April 4, 2007, Covad filed its Notice of Withdrawal of Petition, without prejudice.

Discussion of Issues

ISSUE 1: Should the Commission acknowledge Covad's Notice of Withdrawal, without prejudice, of its Petition?

RECOMMENDATION: Yes. The Commission should acknowledge Covad's Notice of Voluntary Withdrawal of its Petition, without prejudice. In addition, the Commission should find that the withdrawal renders any and all outstanding motions moot. (TEITZMAN, DOWDS)

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).

Therefore, staff recommends that the Commission acknowledge Covad's Notice of Voluntary Withdrawal of its Petition, without prejudice, and find that the voluntary dismissal renders any and all outstanding motions moot.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. There is nothing further in the docket for this Commission to address, and the docket should be closed. (TEITZMAN)

STAFF ANALYSIS: There is nothing further in the docket for this Commission to address, and the docket should be closed.