

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:** January 13, 2009

**TO:** Office of Commission Clerk (Cole)

**FROM:** Office of the General Counsel (Murphy)  
Division of Regulatory Compliance (Bloom, King)

**RE:** Docket No. 080308-TP – Complaint against MCI Communications Services, Inc. d/b/a Verizon Business Services for failure to pay intrastate access charges pursuant to Embarq's tariffs, by Embarq Florida, Inc.

**AGENDA:** 01/26/09 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Skop

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\080308.RCM.DOC

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### Case Background

On June 6, 2008, Embarq Florida, Inc. (“Embarq”) filed a complaint with the Florida Public Service Commission (“Commission”) in which Embarq alleged that MCI Communications Services, Inc. d/b/a Verizon Business Services (“Verizon”) was failing to pay intrastate access charges pursuant to Embarq’s tariffs.

On June 26, 2008, Verizon filed its Motion to Dismiss Complaint (“Motion”) and Request for Oral Argument (“Request”). On July 1, 2008, Verizon filed a Supplement to its Motion.

On July 8, 2008, Embarq filed its Response to Verizon’s Motion.

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The Commission granted Verizon's Request and then heard oral argument on Verizon's Motion at the Commission's October 28, 2008, Agenda Conference. By Order No. PSC-08-0752-PCO-TP, issued on November 13, 2008, the Commission denied Verizon's Motion.

On December 18, 2009, Embarq filed a Notice of Dismissal with Prejudice ("Notice") in which Embarq 1) advised the Commission that the parties have settled the issues in the docket and 2) asked that this docket be closed.

**Discussion of Issues**

**Issue 1:** Should the Commission acknowledge Embarq's Notice?

**Recommendation:** Yes. The Commission should acknowledge Embarq's Notice. **(MURPHY)**

**Staff Analysis:** The law is clear that a plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So.2d 578, 579 (Fla. 1975). Once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act on a matter. Randle Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68, 69 (Fla. 1978). In its Notice, Embarq states that "the parties have settled the issues in this docket. Accordingly, no further action is necessary in this matter." As such, staff recommends that the Commission acknowledge Embarq's Notice.

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

**Recommendation**: Yes. If the Commission approves staff's recommendation in Issue 1, there are no further matters for the Commission to adjudicate in this docket and, therefore, the docket should be closed. **(MURPHY)**

**Staff Analysis**: If the Commission approves staff's recommendation in Issue 1, there are no further matters for the Commission to adjudicate in this docket and, therefore, the docket should be closed.