

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: MAY 30, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION
ADMINISTRATIVE SERVICES (BAYO)

FROM: OFFICE OF THE GENERAL COUNSEL (FUDGE) *FLC*
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (J. BROWN) *JB*

RE: DOCKET NO. 011374-TP - COMPLAINT BY BELL SOUTH
TELECOMMUNICATIONS, INC. AGAINST VARTEC TELECOM, INC.
D/B/A VARTEC TELECOM AND CLEAR CHOICE COMMUNICATIONS
REGARDING PRACTICES IN THE REPORTING OF PERCENT INTERSTATE
USAGE FOR COMPENSATION FOR JURISDICTIONAL ACCESS SERVICES.

AGENDA: 06/11/02 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\011374.RCM

CASE BACKGROUND

On October 18, 2001, BellSouth Telecommunications, Inc. (BellSouth) filed a complaint against VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications (VarTec) regarding practices in the reporting of percent interstate usage for compensation for jurisdictional access services.

On November 13, 2001, VarTec filed with this Commission a Notice of Removal to the United States District Court for the Northern District of Florida. On February 19, 2002, the Court remanded the case to the Commission. On March 29, 2002, VarTec filed a Motion to Dismiss the Complaint.

By Order No. PSC-02-0491-PCO-TP, issued April 10, 2002, BellSouth was granted a fourteen day extension in which to file its

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response. On April 24, 2002, BellSouth filed its response to the Motion to Dismiss.

On May 17, 2002, BellSouth filed a Notice of Voluntary Dismissal of Complaint withdrawing and voluntarily dismissing with prejudice, its complaint against VarTec.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge BellSouth's withdrawal of its Complaint against VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications and close the docket?

RECOMMENDATION: Yes. The Commission should acknowledge BellSouth's withdrawal of its Complaint against VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications, find that the Voluntary Dismissal renders any and all outstanding motions moot, and close this Docket. **(FUDGE, BROWN)**

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). Therefore, staff recommends that the Commission acknowledge BellSouth's withdrawal of its Complaint against VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications. Staff also recommends that the Commission find that the outstanding Motion to Dismiss the Complaint filed by VarTec is rendered moot. Thereafter, the Docket should be closed.