

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-

RECEIVED-FPSC  
10 MAY 28 AM 11:12  
COMMISSION  
CLERK

**DATE:** June 3, 2010

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

**FROM:** Office of the General Counsel (Murphy) *Can Murphy*  
Division of Regulatory Analysis (Bloom, Hawkins, King, Trueblood) *BH*

**RE:** Docket No. 080631-TP – Petition for Commission to intervene, investigate and mediate dispute between DSL Internet Corporation d/b/a DSLi and BellSouth Telecommunications, Inc.

**AGENDA:** 06/15/10 – 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\080631.RCM.DOC

### Case Background

On October 9, 2008, DSL Internet Corporation (“DSLi”) filed its Petition for the Florida Public Service Commission (“Commission”) to Intervene, Investigate and Mediate (“Petition”) in which DSLi asked the Commission to enjoin BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T”) from suspending the services of DSLi, to deny AT&T the true-up of rates, and to provide “any such other and further relief as the Commission deems necessary to protect the Florida consumer.”

On November 3, 2008, AT&T filed a Partial Motion to Dismiss which was granted by the Commission. The case was set for hearing. On January 8, 2010, AT&T filed a Request for Continuance which was granted by the Commission and a new hearing date was established. On

DOCUMENT NUMBER-DATE

04480 MAY 28 09

FPSC-COMMISSION CLERK

Docket No. 080631-TP  
Date: June 3, 2010

May 21, 2010, DSLi filed its Notice of Voluntary Dismissal which is the subject of the instant staff recommendation.

**Discussion of Issues**

**Issue 1:** Should the Commission acknowledge DSLi's May 21, 2010, Notice of Voluntary Dismissal?

**Recommendation:** Yes, the Commission should acknowledge DSLi's May 21, 2010, Notice of Voluntary Dismissal. (Murphy)

**Staff Analysis:** A plaintiff's right to take a voluntary dismissal is absolute<sup>1</sup> and once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.<sup>2</sup> Both of these legal principles have been recognized in administrative proceedings.<sup>3</sup> Thus, staff recommends that the Commission acknowledge DSLi's Notice of Voluntary Dismissal as a matter of right.

---

<sup>1</sup> Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975)

<sup>2</sup> Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978)

<sup>3</sup> Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1st DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2d DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123 (Fla. 2d DCA 1993) aff'd, 645 So. 2d 374 (Fla. 1994).

Docket No. 080631-TP

Date: June 3, 2010

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

**Recommendation:** Yes, this docket should be closed. **(Murphy)**

**Staff Analysis:** With DSLi's Voluntary Dismissal of its Petition, nothing remains to be done in this docket and staff recommends that the docket be closed.