

Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: JULY 20, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMPETITIVE SERVICES (SIMMONS) *SAS*
DIVISION OF LEGAL SERVICES (B. KEATING) *JK*
DIVISION OF POLICY ANALYSIS & INTERGOVERNMENTAL LIAISON
(CORDIANO) *WJ* *Rob*

RE: DOCKET NO. 980703-TP - REQUEST FOR ARBITRATION CONCERNING COMPLAINT OF EASY CELLULAR, INC. D/B/A TELCOM PLUS AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. FOR ALLEGED VIOLATIONS OF THE TELECOMMUNICATIONS ACT OF 1996 AND CHAPTER 364 OF THE FLORIDA STATUTES.

AGENDA: 08/01/00 - REGULAR AGENDA - DISMISSAL OF PETITION FOR NON-ACTION

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\980703.RCM

CASE BACKGROUND

On June 1, 1998, Easy Cellular, Inc. d/b/a Telcom Plus (Easy Cellular) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) alleging violations of the Telecommunications Act of 1996. On June 22, 1998, BellSouth filed its answer and asserted a counterclaim against Easy Cellular. This matter was originally scheduled for a hearing on January 21, 1999, and a prehearing was scheduled for January 4, 1999.

Testimony was filed in accordance with the Order Establishing Procedure, Order No. PSC-98-1389-PCO-TP, issued October 15, 1998, and the notice of hearing was issued. However, by letter dated January 8, 1999, (filed January 12, 1999) counsel for Easy Cellular

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requested that the hearing and prehearing be canceled, because the parties were close to a settlement of the issues presented in the Petition. At that time, the prehearing had already been postponed. The parties agreed a continuance was appropriate. Therefore, by notice issued January 14, 1999, the hearing and prehearing were canceled. Thereafter, staff contacted counsel for both parties to determine the status of the negotiations. In response, counsel for Easy Cellular sent a letter on May 28, 1999, to staff counsel indicating that Easy Cellular was currently in litigation regarding the issues presented in this docket, and as such, did not wish to withdraw the complaint. Since that time, however, staff has been unable get a response from Easy Cellular regarding the status of its complaint or its position on whether the docket should remain open, in spite of repeated calls to counsel for Easy Cellular. It has been well over one year since there has been any action in this Docket. Therefore, staff brings the following recommendation.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission, on its own motion, dismiss Easy Cellular's Complaint Against BellSouth for failure to pursue the complaint?

RECOMMENDATION: Yes. Easy Cellular has not responded to staff inquiries regarding the status of the parties' negotiations or litigation and has not made any filing in this Docket for well over one year. Therefore, staff recommends that the Complaint be dismissed without prejudice. **(KEATING, SIMMONS, CORDIANO)**

STAFF ANALYSIS: As stated in the Case Background, testimony was filed in accordance with the Order Establishing Procedure, Order No. PSC-98-1389-PCO-TP, issued October 15, 1998, and the notice of hearing was issued. However, on January 12, 1999, counsel for Easy Cellular sent a letter requesting that the hearing and prehearing be canceled, because the parties were close to a settlement of the issues presented in the Petition. The parties agreed a continuance was appropriate. Therefore, on January 14, 1999, the hearing was canceled. Thereafter, staff contacted counsel for both parties to determine the status of the negotiations. In response, counsel for Easy Cellular sent a letter on May 28, 1999, to staff counsel indicating that Easy Cellular was currently in litigation regarding the issues presented in this docket, and as such, did not wish to

withdraw the complaint. Since that time, however, staff has been unable get a response from Easy Cellular regarding the status of its complaint or its position on whether the docket should remain open, in spite of repeated calls to counsel for Easy Cellular. It has been well over one year since there has been any action in this Docket.

Pursuant to Rule 1.420(e), Florida Rules of Civil Procedure, any proceeding in which it appears on the face of the record that no action has taken place for over one year shall be dismissed by the court on its own motion or on the motion of any interested person, whether a party or not, after reasonable notice to the parties, unless a stay is approved or either party shows good cause for not dismissing the action. Although there is no similar provision in the Uniform Rules, staff believes that the Commission dismissing this proceeding for non-action would be consistent with the stated purpose of the Uniform Rules, which is to "secure the just, speedy, and inexpensive determination of every proceeding." Rule 28-106.101, Florida Administrative Code. Furthermore, although the Commission has not specifically dismissed a case on its own motion based upon non-action under Rule 1.420(e), Florida Rules of Civil Procedure, the Commission has dismissed, on its own motion, a case in a somewhat similar posture. See Order No. 17626, issued May 28, 1987, in Dockets Nos. 860531-SU and 860572-SU. Staff notes, however, that in that case, the petitioner had also failed to comply with the procedural order for the dockets. Staff is aware of no other agency or court decisions directly on point. Staff recommends, therefore, that the Commission dismiss, on its own motion, Easy Cellular's complaint in this Docket, without prejudice, for non-action in the case for a period of over one year.

ISSUE 2: Should this Docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, this Docket should be closed. **(KEATING)**

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this Docket should be closed.