

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration
concerning complaint of
BellSouth Telecommunications,
Inc. against Supra
Telecommunications and
Information Systems, Inc. for
resolution of billing disputes.

DOCKET NO. 001097-TP
ORDER NO. PSC-02-0508-FOF-TP
ISSUED: April 12, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER ACKNOWLEDGING JOINT NOTICE OF
VOLUNTARY DISMISSAL WITHOUT PREJUDICE

BY THE COMMISSION:

BACKGROUND

BellSouth Telecommunications, Inc. (BellSouth) provides local exchange telecommunications services for resale pursuant to the Telecommunications Act of 1996 and to resale agreements entered into between BellSouth and various Alternative Local Exchange Companies (ALECs). Supra Telecommunications and Information Systems, Inc. (Supra) is an ALEC certified by this Commission to provide local exchange services within Florida. On August 9, 2000, BellSouth filed a complaint against Supra, alleging that Supra has violated Attachment 6, Section 13 of their present agreement by refusing to pay non-disputed sums. The complaint also alleges billing disputes arising from the prior resale agreement with Supra.

On August 30, 2000, Supra filed its Motion to Dismiss Complaint or, in the Alternative, Stay Proceedings and/or Compel Arbitration. That Motion was granted in part and denied in part by Order No. PSC-00-2250-FOF-TP, issued November 28, 2000. In the Order, we retained jurisdiction over all disputes arising out of the original Agreement between the two parties, entered into on June 1, 1997. On November 27, 2000, Supra filed its Answer and Counterclaim to BellSouth's Complaint. Subsequently, Supra filed an Amended Answer and Counterclaim on December 18, 2000.

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On May 3, 2001, an evidentiary hearing was held on the portions of the complaint over which we retained jurisdiction. The findings from that hearing were incorporated in Final Order on Complaint, Order No. PSC-01-1585-FOF-TP, issued July 31, 2001. On August 15, 2001, Supra filed its Motion for Reconsideration of Final Order No. PSC-01-1585-FOF-TP, and that Motion was set for Agenda Conference on October 2, 2001.

Prior to the scheduled Agenda Conference, a procedural irregularity was brought to the attention of this Commission, which prompted a deferral of the item from the scheduled Agenda. This Commission directed further inquiry, which failed to disclose any prejudice to either party. Nevertheless in order to remove any possible appearance of prejudice, this matter was set for a rehearing. Therefore, by Order No. PSC-02-0143-PCO-TP, issued January 31, 2002 (Order Setting Matter For Rehearing and Establishing Procedure), the prehearing conference, hearing, and other key activities dates were set forth for the hearing process in this case. This matter is scheduled for hearing on April 5, 2002.

On February 13, 2002, Supra filed its Motion to Dismiss for Lack of Subject Matter Jurisdiction. On February 20, 2002, BellSouth filed its Motion for Extension of Time to Respond to Supra's Motion to Dismiss for Lack of Subject Matter Jurisdiction. On February 27, 2002, BellSouth filed its Response to Supra's Motion to Dismiss for Lack of Subject Matter Jurisdiction.

On February 22, 2002, BellSouth filed its Motion to Strike Portions of the Direct Testimony of Olukayode Ramos and David Nilson. On March 1, 2002, Supra filed its Response to BellSouth's Motion to Strike Portions of the Direct Testimony of Olukayode Ramos and David Nilson.

At our March 19, 2002, Agenda Conference, we granted the Motion for Extension of Time to Respond, denied the Motion to Dismiss, and denied the Motion to Strike.

Thereafter, on March 26, 2002, BellSouth and Supra filed a Joint Notice of Voluntary Dismissal Without Prejudice of the complaint and counter-claim filed in this docket.

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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, we acknowledge BellSouth's and Supra's Joint Voluntary Dismissal Without Prejudice and cancel the hearing. We also find that the outstanding Requests for Confidential Classification, as well as Supra's March 22, 2002, Motion to Compel More Responsive Answers to its First Set of Interrogatories, are rendered moot.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s and Supra Telecommunications and Information Systems, Inc.'s Joint Notice of Voluntary Dismissal Without Prejudice is hereby acknowledged. It is further

ORDERED that the outstanding Requests for Confidential Classification, as well as Supra's March 22, 2002, Motion to Compel More Responsive Answers to its First Set of Interrogatories, are rendered moot. It is further

ORDERED that any confidential information retained in the Docket shall be returned to the respective owners. It is further

ORDERED that the Docket shall be closed.

By ORDER of the Florida Public Service Commission this 12th day of April, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.