

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition and complaint of AT&T Communications of the Southern States, LLC against BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for alleged anticompetitive pricing of long distance service.

DOCKET NO. 031046-TP
ORDER NO. PSC-04-0718-FOF-TP
ISSUED: July 23, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

FINAL ORDER ACKNOWLEDGING VOLUNTARY WITHDRAWAL OF PETITION

BY THE COMMISSION:

CASE BACKGROUND

On November 12, 2003, AT&T Communications of the Southern States, LLC (AT&T) filed a formal Petition and Complaint (Petition) against BellSouth Telecommunications, Inc. (BellSouth) and BellSouth Long Distance, Inc. (BSLD). Therein, AT&T asserts anti-competitive pricing of long distance service related to the BellSouth Saving Plan® Promotion #31 (the 1-cent promotion) and asks for suspension and cancellation of the promotion filed by BSLD.¹ AT&T contends that the promotion is unlawful, because BSLD is offering service at a rate that does not cover the cost that AT&T and other carriers must cover in order to provide a like service due to the intrastate switched access rate that AT&T and other carriers must pay BellSouth.

On December 2, 2003, BellSouth filed a Motion to Dismiss Petition and Complaint or in the Alternative Motion for Summary Judgment. That same day, BSLD filed an Answer to the Complaint. On December 9, 2004, AT&T filed its Response to BellSouth's Motion, along with its own Motion for Summary Final Order. Thereafter, on January 15, 2004, BSLD also filed a Motion for Summary Order. On January 29, 2004, AT&T filed a Response in Opposition to BSLD's Motion.

¹ Promotion #31 provided that customers who subscribed to BSLD's BellSouth Savings Plan would pay 1-cent per minute (rounded up to the next minute) during the promotional period of October 16, 2003, to January 31, 2004, plus a monthly fee of \$3.95. After January 31, 2004, the monthly rate would be 5 cents per minute. Although the specific promotion about which AT&T complains has terminated, a similar promotion has been filed by BSLD.

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FPSC-COMMISSION CLERK

On February 11, 2004, Commission staff held an informal status meeting and requested that the parties file additional comments regarding the application of Section 364.051(5)(c) to the issues presented in this docket. On April 20, 2004, our staff received the last of the informal comments from the parties. Thereafter, our staff brought this matter for our consideration.

DETERMINATION

The matter at hand was taken up at the July 6, 2004, Agenda Conference. At the Agenda Conference, counsel for AT&T made a request for a voluntary withdrawal of the underlying petition in this docket. This Commission granted the request for voluntary withdrawal noting that our decision was without prejudice to refile an amended petition. As a result, this Commission finds that all other responsive pleadings in the docket have been rendered moot and finds it appropriate that the docket shall be closed.

It is therefore,

ORDERED by the Florida Public Service Commission that AT&T Communications of the Southern States, LLC's request for a voluntary withdrawal of the underlying petition in this docket is hereby granted without prejudice. It is further

ORDERED that all other responsive pleadings in the docket have been rendered moot. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of July, 2004.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(SEAL)

JPR

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.