

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for expedited ruling requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to file for review and approval any agreements with CLECs concerning resale, interconnection, or unbundled network elements, by Florida Competitive Carriers Association, AT&T Communications of the Southern States, LLC d/b/a AT&T, MCImetro Access Transmissions Services LLC, and MCI WorldCom Communications, Inc.

DOCKET NO. 040530-TP
ORDER NO. PSC-06-0913-FOF-TP
ISSUED: November 2, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

ORDER ACKNOWLEDGING NOTICE OF WITHDRAWAL

BY THE COMMISSION:

We are vested with jurisdiction pursuant to Section 252 of the Telecommunications Act of 1996 and Section 364.162, Florida Statutes.

Petitioners in this case are the following: Florida Competitive Carriers Association, AT&T Communications of the Southern States, LLC, MCImetro Access Transmission Services, LLC and MCI WorldCom Communications, Inc. (collectively, Joint CLECs). Respondents are BellSouth Telecommunications, Inc. (BellSouth) and Verizon Florida, Inc. (Verizon) (collectively, the ILECs). On June 7, 2004, the Joint CLECs filed a petition requesting that Respondent ILECs be required to file with the Commission for review certain agreements (Petition). Specifically, the agreements to be filed were those agreements between the ILECs and other carriers that had not been publicly filed with the Commission that address terms, conditions, or pricing in Florida for resale, interconnection, or Unbundled Network Elements (UNEs). Included in this definition of "agreements" were the full content of any understandings, oral agreements, or side agreements that may have a bearing on such agreements. The Petition also requested that the Commission enter an order asserting its jurisdiction over commercially negotiated agreements under state law, federal law, or both. Finally, the Petition requested that the ILECs be required to make all commercially negotiated agreements publicly available and posted on the Commission's website.

DOCUMENT NUMBER-DATE

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PSC-COMMISSION CLERK

On June 28, 2004 and July 2, 2004, respectively, BellSouth and Verizon each filed a Response in Opposition and Motion to Dismiss to the Petition. BellSouth and Verizon do not dispute any facts raised by the Joint CLECs in the Petition.

The Joint CLECs filed responses to both the BellSouth and Verizon Motions to Dismiss on July 6 and July 14, 2004, respectively.

On August 20, 2004, the Federal Communications Commission (FCC) released its *Order and Notice of Proposed Rulemaking (FCC Interim Order and NPRM, FCC 04-179)*, *In the Matter of Unbundled Access to Network Elements* (WC Docket No. 04-313) and *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338). In the *Interim Order and NPRM*, the FCC solicited comment on alternative unbundling rules to respond to the U.S. Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decision in *United States Telecom Ass'n v. FCC*, 360 U.S. App. D.C. 202, 359 F. 3d 554 (*USTA II*). Among other things, the *Interim Order and NPRM* incorporated the requests filed by SBC and BellSouth for a declaratory ruling on whether ILECs are required to file non-251 agreements, BellSouth's petition requesting forbearance from enforcement of Section 252 with respect to non-251 commercially negotiated agreements, and a BellSouth Emergency Petition for Declaratory Ruling and Preemption of State Action.

By Order No. PSC-04-1072-PCO-TP, issued November 3, 2004, we determined that the issues in the Joint CLECs' Petition were essentially the same issues to be addressed in the proceedings arising from the FCC's *Interim Order and NPRM*. Therefore, we held that Docket No. 040530-TP be held in abeyance until a final decision was reached in the FCC's proceedings.

On February 4, 2005, the FCC released its *Triennial Review Remand Order (TRRO)*¹ in which it addressed the issues remanded in *USTA II*. The FCC indicated that it will address the issues, which are the subject of the Joint CLECs' Petition, in subsequent orders.

On September 20, 2006, the Competitive Carriers of the South, Inc. (CompSouth)(formerly known as Florida Competitive Carriers Association), AT&T Communications of the Southern States, LLC (AT&T), and MCImetro Access Transmission Services, LLC (on its own behalf and as successor to MCI WorldCom Communications, Inc.) filed a Notice of Withdrawal. In their withdrawal, the Joint CLECs (Petitioners) assert that they withdraw, without prejudice, the Petition filed in this Docket on June 7, 2004.

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, the Joint CLECs' Notice of Withdrawal is hereby acknowledged without prejudice and find that the voluntary withdrawal renders any and all outstanding motions moot. Additionally, we find that all confidential materials filed in this Docket shall be returned to the filing party.

¹ *In Re: Unbundled Access to Network Elements*, WC Docket No. 04-313, CC Docket, No. 01-338.

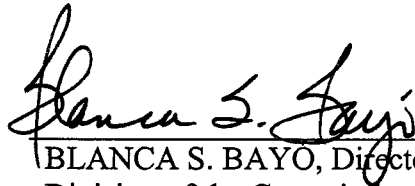
With the withdrawal of the Petition, there are no further matters for us to adjudicate in this Docket. Therefore, it shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Notice of Withdrawal filed by Competitive Carriers of the South, Inc., AT&T Communications of the Southern States, LLC, and MCImetro Access Transmission Services, LLC is acknowledged without prejudice. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 2nd day of November, 2006.



BLANCA S. BAYO, 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.