

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.	DOCKET NO. 041269-TP ORDER NO. PSC-06-0307-FOF-TP ISSUED: April 20, 2006
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The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA

ORDER ACKNOWLEDGING NOTICE OF  
VOLUNTARY DISMISSAL WITHOUT PREJUDICE

BY THE COMMISSION:

Case Background

On November 1, 2004, BellSouth filed a Petition asking this Commission to determine what changes are required in existing, approved interconnection agreements between BellSouth and CLECs in Florida as a result of changes in law from recent FCC and federal appellate court decisions.

A final administrative hearing was conducted on November 2-4, 2005 before a panel of three Commissioners.

On February 27, 2006, after our initial vote in this Docket, Supra Telecommunications and Information Systems, Inc. (Supra), Florida Digital Network, Inc. d/b/a FDN Communications, Inc. (FDN), Nuvox Communications, Inc./NewSouth Communications Corp. (Nuvox/NewSouth), Xspedius Communications, LLC (Xspedius), and DIECA Communications, Inc. d/b/a Covad Communications Co. (Covad) (collectively "Joint Petitioners") filed a Joint Petition for Rehearing and Request for Expedited Treatment (Joint Petition). The Joint Petitioners argue that this Commission committed a procedural error in only assigning a panel of three Commissioners to hear this matter. The Joint Petitioners request we implement any and all such relief as may be necessary and appropriate to remedy this alleged error.

On March 3, 2006, the Joint Petitioners filed their Notice of Voluntary Dismissal Without Prejudice (Dismissal Notice) of their Joint Petition. The Joint Petitioners request an order be entered accepting the voluntary dismissal of their Joint Petition without prejudice, and acknowledging that the argument set forth in the Petition was timely raised and preserved in the record for purposes of appeal.

On March 7, 2006, BellSouth filed a letter in response to the Joint Petitioners' Dismissal Notice. In its letter, BellSouth states that it does not object to the voluntary dismissal. However,

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BellSouth further states that it does object to the aspect of the Dismissal Notice that requests we acknowledge the existence of arguments that are withdrawn.

We note that on March 15, 2006, Supra filed its Motion for Reconsideration. In its Motion for Reconsideration, Supra once again requests we address whether the Commission committed a procedural error in assigning three Commissioners to address this matter. This argument, and the Motion for Reconsideration, will be considered at a later date.

Decision

The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lundsford, 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 hereby acknowledge the Joint Petitioner's Notice of Voluntary Dismissal Without Prejudice of their Joint Petition for Rehearing and Request for Expedited Treatment. Additionally, in light of Supra's Motion for Reconsideration, we shall defer consideration of the timeliness of Supra's argument that this Commission erred in using a three Commissioner panel until we consider Supra's Motion for Reconsideration.

Based on the foregoing, it is

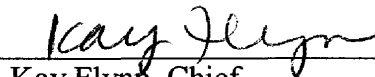
ORDERED by the Florida Public Service Commission that we acknowledge the Joint Petitioner's Notice of Voluntary Dismissal Without Prejudice. It is further

ORDERED that this docket shall remain open pending Commission approval of the final arbitration agreements in accordance with §252 of the Telecommunications Act of 1996.

By ORDER of the Florida Public Service Commission this 20th day of April, 2006.

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

By:



Kay Flynn, Chief  
Bureau of Records

( S E A L )

AJT

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.