

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 980703-TP
ORDER NO. PSC-00-1490-FOF-TP
ISSUED: August 18, 2000

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR.
LILA A. JABER

FINAL ORDER DISMISSING COMPLAINT

BY THE COMMISSION:

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 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, our 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

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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, our 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, we believe that if we were to dismiss this proceeding for non-action, our 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 we have not specifically dismissed a case on our own motion based upon non-action under Rule 1.420(e), Florida Rules of Civil Procedure, we have dismissed, on our 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. We note, however, that in that case, the petitioner had also failed to comply with the procedural order for the dockets. We are aware of no other agency or court decisions directly on point. We shall, therefore, dismiss, on our own motion, Easy Cellular's complaint in this Docket, without prejudice, for non-action in the case for a period of over one year.

It is therefore

ORDERED by the Florida Public Service Commission that the June 1, 1998, Complaint filed by Easy Cellular, Inc. d/b/a Telcom Plus is hereby dismissed, without prejudice. It is further

ORDERED that this Docket shall be closed.

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By ORDER of the Florida Public Service Commission this 18th
day of August, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(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 Records and Reporting, 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 Records and reporting 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.