

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Florida
Digital Network, Inc. against
BellSouth Telecommunications,
Inc. and request for emergency
relief requiring BellSouth to
process orders pending
resolution of disputes.

DOCKET NO. 020252-TP
ORDER NO. PSC-02-0710-FOF-TP
ISSUED: May 24, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER ACKNOWLEDGING JOINT NOTICE OF VOLUNTARY DISMISSAL
WITHOUT PREJUDICE

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). Florida Digital Network, Inc. (FDN) is an ALEC certified by this Commission to provide local exchange services within Florida. On March 18, 2002, FDN filed its Complaint against BellSouth, requesting emergency relief and an order requiring BellSouth to process orders pending resolution of disputes. On April 3, 2002, BellSouth filed its answer, as well as a counterclaim requesting relief for monies owed. Pursuant to Order No. PSC-02-0488-PCO-TP, issued April 8, 2002, the matter was scheduled for hearing on May 2, 2002.

The parties agreed to mediation of the dispute, with our staff acting as mediator. Following an extensive mediation session with a staff mediator, the parties continued with negotiations over the matters in dispute. Thereafter, on April 23, 2002, BellSouth and FDN 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 hereby acknowledge BellSouth's and FDN's Joint Voluntary Dismissal Without Prejudice and cancel the hearing. Any outstanding motions are rendered moot. The Docket shall be closed and any confidential information retained in the Docket shall be returned to the respective owners, rendering the outstanding Request for Confidential Classification moot.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that BellSouth's and FDN's Joint Voluntary Dismissal Without Prejudice is hereby acknowledged. It is further

ORDERED that any outstanding motions are rendered moot. Any confidential information retained in the Docket shall be returned to the respective owners, rendering the outstanding Request for Confidential Classification moot. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission this 24th day of May, 2002.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

CLF

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.