

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Supra  
Telecommunications and  
Information Systems, Inc.  
against BellSouth  
Telecommunications, Inc. for  
non-compliance with Commission  
Order PSC-02-0878-FOF-TP.

DOCKET NO. 021249-TP  
ORDER NO. PSC-03-1465-FOF-TP  
ISSUED: December 23, 2003

The following Commissioners participated in the disposition of this matter:

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

ORDER ACKNOWLEDGING WITHDRAWAL OF PETITION

BY THE COMMISSION:

On December 18, 2002, Supra Telecommunications and Information Systems, Inc. (Supra) filed a Complaint against BellSouth Telecommunications, Inc. (BellSouth) seeking relief for BellSouth's non-compliance with the Commission's Order No. PSC-02-0878-FOF-TP, as clarified in Commission Order No. PSC-02-1453-FOF-TP and Provision 2.16.7 of the parties' Interconnection Agreement.

On January 7, 2003, BellSouth filed a Motion to Dismiss Supra's Complaint. On January 14, 2003, Supra filed its Response in Opposition to BellSouth's Motion to Dismiss. On March 20, 2003, a recommendation addressing BellSouth's Motion to Dismiss and Supra's Response in Opposition was filed. The recommendation was deferred from the April 1, 2003, Agenda Conference. At the May 6, 2003, Agenda Conference, we voted to defer ruling on Issues 1 through 3 of the recommendation. We also voted to defer the item for at least 60 days to allow the parties time to negotiate and should the parties fail to reach agreement, the recommendation was to be brought back to Agenda Conference.

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Since the parties were unable to negotiate a resolution, the recommendation was scheduled to be considered again at the September 16, 2003, Agenda Conference. The parties requested a brief deferral to the next Agenda Conference. At the September 30, 2003, Agenda Conference, we again voted to defer the matter. On October 2, 2003, Supra filed its Notice of Voluntary Withdrawal without Prejudice.

This Order addresses Supra's Notice of Voluntary Withdrawal without Prejudice. 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 acknowledge Supra's Notice of Voluntary Dismissal Without Prejudice of its Petition. Since no further action is needed, all confidential materials filed in this docket shall be returned to the filing party. Further, any pending motions and responses are rendered moot.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Supra Telecommunications and Information Systems, Inc.'s Notice of Voluntary Dismissal Without Prejudice of its Petition is hereby acknowledged. It is further

ORDERED that all confidential materials filed in this docket shall be returned to the filing party. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 23rd  
day of December, 2003.

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 )

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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.