

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by XO Florida, Inc. for arbitration of certain unresolved issues in negotiations for interconnection and resale agreement with Sprint-Florida, Incorporated.

DOCKET NO. 030467-TP  
ORDER NO. PSC-04-0433-FOF-TP  
ISSUED: April 28, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY

ORDER ACKNOWLEDGING XO FLORIDA, INC.'s  
NOTICE OF VOLUNTARY DISMISSAL

BY THE COMMISSION:

On May 29, 2003, XO Florida, Inc. (XO) filed a petition for arbitration of certain unresolved issues in negotiations for an interconnection and resale agreement with Sprint-Florida, Incorporated (Sprint). On the same date, Sprint filed a duplicate petition. On June 6, 2003, Sprint filed a letter it had received from XO, which stated that XO planned to file an amended petition and that Sprint would withdraw the petition it had submitted. On June 13, 2003, XO filed its amended petition, resolving the differences between the two petitions. On June 23, Sprint filed its response to XO's petition. An issue identification meeting was held on July 16, 2003. At the conclusion of the issue identification meeting, the parties agreed to all of the issues except Issues 25, 26, and 27. Order No. PSC-03-0865-PCO-TP (Order Establishing Procedure), issued July 24, 2004, established the procedure in this docket. The Order Establishing Procedure was revised twice by Order No. PSC-03-0936-PCO-TP, issued August 15, 2003, and Order No. PSC-03-1013-PCO-TP, issued September 9, 2003.

On September 29, 2003, XO and Sprint filed a joint motion for extension of time to file direct testimony because the parties stated that they were close to resolving all of the issues remaining in this arbitration. By Order No. PSC-03-1093-PCO-TP, issued October 2, 2003, the parties' request for extension of time was granted. Since the parties appeared close to reaching a settlement, in that Order the procedural dates were suspended until November 1, 2003, the hearing dates were cancelled, and new procedural dates were to be reestablished at a later date.

On October 29, 2003, XO's counsel filed a letter indicating that on October 24, 2003, the parties had reached a settlement agreement in this docket. The letter stated that Sprint filed a Notice of adoption of the interconnection, unbundling, and resale agreement, and amendment between Sprint and Level 3 Communications, LLC, in Docket No. 031002-TP. XO stated that it

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would withdrawal its Petition for Arbitration once its new agreement became effective. On February 12, 2004, XO filed its Notice of Voluntary Dismissal.

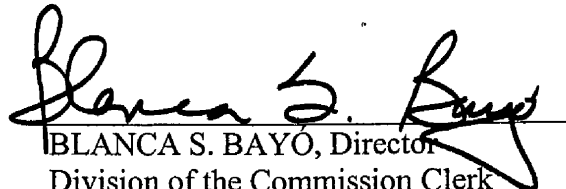
The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So.2d 578, 579 (Fla. 1975). It is also established civil law that once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68, 69 (Fla. 1978). Therefore, we acknowledge XO's Notice of Voluntary Dismissal of its Petition.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that XO Florida, Inc.'s Notice of Voluntary Dismissal of its Petition is hereby acknowledged. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 28th day of April, 2004.

  
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.