

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition of Allegiance Telecom of Florida, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc.

DOCKET NO. 030339-TP
ORDER NO. PSC-04-0946-FOF-TP
ISSUED: September 27, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER ACKNOWLEDGING ALLEGIANCE TELECOM OF FLORIDA, INC.'S LETTER
AS A VOLUNTARY DISMISSAL

BY THE COMMISSION:

Case Background

On April 11, 2003, Allegiance Telecom of Florida, Inc. (Allegiance) filed for arbitration of certain terms and conditions of a proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. (BellSouth). On May 6, 2003, BellSouth filed its Response. An issue identification meeting was held on July 8, 2003. A Revised Order Establishing Procedure was issued on August 13, 2003. This Order set the Prehearing for November 7, 2003, and the Hearing for December 9 – 10, 2003.

On November 6, 2003, the parties notified our staff that they had reached an agreement on all issues and would no longer need to proceed with the arbitration. Despite reaching an agreement, no interconnection agreement was filed. Therefore, on May 27, 2004, counsel for this Commission sent a certified letter to counsel for Allegiance asking the company to file the agreement or risk having the docket closed for lack of activity. On August 2, 2004, counsel for this Commission received a letter from Allegiance stating, “. . . Allegiance believes that considerations of administrative efficiency support closing Docket 030339-TP at this time.”

Holding:

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).

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ORDER NO. PSC-04-0946-FOF-TP
DOCKET NO. 030339-TP
PAGE 2

As stated above, Allegiance's letter fully supports closing the docket, and we find the letter serves the same purpose as a voluntary dismissal. Therefore, we acknowledge Allegiance's letter that supports closing the docket.

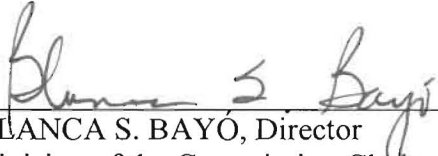
In conclusion, there is nothing further in this Docket for us to consider, and the Docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Allegiance Telecom of Florida, Inc.'s letter is accepted as a voluntary dismissal. It is further

ORDERED that no further action is needed and this docket is closed.

By ORDER of the Florida Public Service Commission this 27th day of September, 2004.



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

(S E A L)

JLS

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.