

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to review and cancel, or in the alternative immediately suspend or postpone, BellSouth Telecommunications, Inc.'s PreferredPack Plan tariffs, by Supra Telecommunications and Information Systems, Inc.

DOCKET NO. 040353-TP
ORDER NO. PSC-05-0520-FOF-TP
ISSUED: May 12, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR

ORDER GRANTING VOLUNTARY WITHDRAWAL

BY THE COMMISSION:

Case Background

On April 20, 2004, Supra Telecommunications & Information Systems, Inc. (Supra) filed its Petition to Review and Cancel BellSouth's Promotional Offering Tariffs offered in conjunction with its new flat rate service known as the PreferredPack Plan. On May 17, 2004, BellSouth Telecommunications, Inc. (BellSouth) filed its Answer to Supra's Petition. On May 27, 2004, Order No. PSC-04-0549-PCO-TP was issued to initiate an expedited discovery procedure.

On July 27, 2004, Supra filed a Motion for a Summary Final Order, contending that there existed no genuine issues of material fact. BellSouth filed its response on September 24, 2004. Supra's Motion was denied by Order No. PSC-04-0975-PCO-TP, issued October 8, 2004.

On November 23, 2004, Supra and BellSouth filed their Joint Motion for Abeyance. By Order No. PSC-04-1215-PCO-TP, issued December 8, 2004, the Joint Motion was granted. On March 24, 2005, Supra filed a 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. Lundsford, 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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Therefore, we hereby acknowledge Supra's Notice of Voluntary Withdrawal of its Petition to Review and Cancel BellSouth's Promotional Offering Tariffs offered in conjunction with its new flat rate service known as the PreferredPack Plan without Prejudice, and find that the voluntary dismissal renders any and all outstanding motions moot.

Since no further action is needed, this docket shall be closed.

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 this docket shall be closed.

By ORDER of the Florida Public Service Commission this 12th day of May, 2005.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

AJT

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.