

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of Florida Digital Network, Inc. d/b/a FDN Communications against BellSouth Telecommunications, Inc. for resolution of certain billing disputes and enforcement of unbundled network element (UNE) orders and interconnection agreements.	DOCKET NO. 030829-TP ORDER NO. PSC-06-0183-FOF-TP ISSUED: March 8, 2006
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The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

ORDER ACKNOWLEDGING VOLUNTARY DISMISSAL

BY THE COMMISSION:

Case Background

On August 18, 2003, Florida Digital Network, Inc. d/b/a FDN Communications (FDN) filed a Complaint for Resolution of Certain Billing Disputes and Enforcement of UNE Orders and Interconnection Agreements with BellSouth Telecommunications, Inc. (BellSouth). On September 3, 2003, BellSouth filed its Answer and Counterclaim. By Order No. PSC-04-0121-PCO-TP, issued February 2, 2004, (Order Establishing Procedure), a procedural schedule was established for this matter. The administrative hearing was held on October 6, 2004.

On October 20, 2004, the parties advised staff counsel that discussions were under way which may resolve the issues in dispute in this Docket. Accordingly, they requested an extension of the due date for filing post-hearing briefs to allow additional time for those discussions. That request was approved on October 28, 2004, with entry of Order No. PSC-04-1063-PCO-TP. On January 27, 2006, FDN filed its Notice of Withdrawal of Complaint.

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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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Digital Network, Inc. d/b/a FDN Communications' Voluntary Withdrawal of Complaint is hereby acknowledged. It is further

ORDERED that any pending motions are rendered moot, and all confidential materials filed in this Docket shall be returned to the filing party. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 8th day of March, 2006.



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

(S E A L)

LF

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

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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.