

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of Northeast Florida Telephone Company d/b/a NEFCOM against Southeastern Services, Inc. for alleged failure to pay intrastate access charges pursuant to NEFCOM's tariffs, and for alleged violation of Section 364.16(3)(a), F.S.

DOCKET NO. 060083-TP

In re: Referral by the Circuit Court of Baker County, Florida to determine whether or not Southeastern Services, Inc. is legally responsible for payment to Northeast Florida Telephone for originating intrastate access charges under Northeast Florida Telephone's Public Service Commission approved tariff for the long distance calls provided by Southeastern Services, Inc. as alleged in the Amended Complaint.

DOCKET NO. 060296-TP
ORDER NO. PSC-07-0346-FOF-TP
ISSUED: April 25, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN

ORDER CLOSING DOCKETS

Background

On September 4, 2003, Northeast Florida Telephone Company (NEFCOM) filed a civil suit against Southeastern Services, Inc. (SSI) in the Circuit Court of the Eighth Judicial Circuit for Baker County, Florida, pursuant to the parties' dispute resolution agreement.¹ The suit involved a dispute over the payment of access charges for alleged Voice over Internet Protocol (VoIP) traffic provided by SSI to its customers.

On January 30, 2006, NEFCOM filed with this Commission its Complaint against SSI alleging (1) failure to pay intrastate access charges pursuant to NEFCOM's tariffs and (2) violation of Section 364.16(3)(a), Florida Statutes. Docket No. 060083-TP was established to address the complaint.

¹Northeast Florida Telephone Company v. Southeastern Services, Inc., Case No. 02-2003-CA-0141.

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FPSC-COMMISSION CLERK

On February 28, 2006, the Baker County Circuit Court entered an Order referring to this Commission the question: "Whether or not Southeastern Services, Inc. is legally responsible for payment to Northeast Florida Telephone Company for originating intrastate access charges under Northeast Florida's Public Service Commission approved tariff for the long distance calls provided by Southeastern Services, Inc. as alleged in the Amended Complaint." Docket No. 060296-TP was opened in light of this referral from the Circuit Court of Baker County.

On March 27, 2006, NEFCOM filed its Amended Complaint that withdrew the portions of its original complaint alleging violations of Section 364.16(3), F.S., and requesting assessment of penalties against SSI. On June 14, 2006, this Commission issued Order No. PSC-06-0506-PCO-TP consolidating Docket Nos. 060083-TP and 060296-TP.

On August 4, 2006, the parties filed an Unopposed Joint Motion for Abatement and Continuance, which was granted by Order No. PSC-06-0687-PCO-TP, issued August 9, 2006. Pursuant to the terms of their Settlement Agreement, the parties agreed that upon fulfillment of the Settlement Agreement, but no later than October 9, 2006, NEFCOM would file a Notice of Voluntary Dismissal with Prejudice of its Amended Complaint in Docket No. 060083-TP, and the parties would collectively file a Joint Motion to Dismiss the Referral from the Circuit Court of Baker County in Docket No. 060296-TP.

On October 9, 2006, the parties filed their Joint Motion to Dismiss the Referral ("Joint Motion to Dismiss") from the Circuit Court in Baker County in Docket No. 060296-TP, and NEFCOM filed its Notice of Voluntary Dismissal with Prejudice of its Amended Complaint filed in Docket No. 060083-TP. On October 11, 2006, the parties filed a Stipulation for Voluntary Dismissals with Prejudice of Amended Complaint and First Amended Counterclaim (Including Corrected First Amended Counterclaim).

On February 6, 2007, our staff received notice from counsel for NEFCOM that the underlying circuit court case has been closed in response to the Stipulation for Voluntary Dismissals filed on October 13, 2006.

DISCUSSION

As explained above, we have before us a joint motion for voluntary dismissal in Docket No. 060296-TP, and a Notice of Withdrawal with prejudice in Docket No. 060083-TP. We now address each individually.

Joint Motion to Dismiss in Docket No. 060296-TP

Docket No. 060296-TP was opened upon a referral from the Circuit Court of Baker County. As noted above, the parties filed their Joint Motion to Dismiss in Docket No. 060296-TP on October 9, 2006. Our staff has confirmed with the Circuit Court in Baker County that the underlying docket was closed on October 13, 2006.

The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So2d 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 So2d 68, 69 (Fla. 1978).

Therefore, we grant the Joint Motion to Dismiss and order that Docket No. 060296-TP be closed.

Notice of Voluntary Dismissal With Prejudice in Docket No. 060083-TP

NEFCOM filed its Notice of Voluntary Dismissal with Prejudice of its Amended Complaint filed in Docket No. 060083-TP on October 9, 2006. As we noted with respect to the Joint Motion to Dismiss, the plaintiff enjoys an absolute right to take a voluntary dismissal of its complaint. Id. Therefore, we acknowledge NEFCOM's Notice of Voluntary Dismissal With Prejudice. Nothing further remains to be determined in this matter, so we order that Docket No. 060296-TP be closed

For the reasons given above, it is

ORDERED that the Joint Motion to Dismiss the Referral from the Circuit Court in Baker County in Docket No. 060296-TP, is granted. It is further

ORDERED that Docket No. 060296-TP shall be closed. It is further

ORDERED that the Notice of Voluntary Dismissal with Prejudice of the Amended Complaint filed in Docket No. 060083-TP is acknowledged. It is further

ORDERED that Docket No. 060083-TP shall be closed.

By ORDER of the Florida Public Service Commission this 25th day of April, 2007.



ANN COLE
Commission Clerk

(S E A L)

PKW

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 judicial review of Commission orders that is available pursuant to Section 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 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 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 Office of Commission Clerk 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.