

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by DIECA Communications, Inc. d/b/a Covad Communications Company against BellSouth Telecommunications, Inc. for alleged breaches of interconnection agreement.

DOCKET NO. 050881-TP  
ORDER NO. PSC-07-0837-FOF-TP  
ISSUED: October 17, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
MATTHEW M. CARTER II  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

ORDER ACKNOWLEDGING  
VOLUNTARY DISMISSAL WITH PREJUDICE  
AND CLOSING DOCKET

BY THE COMMISSION:

On November 17, 2005, DIECA Communications, Inc., d/b/a Covad Communications Company (Covad) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged breach of their interconnections agreement. In addition to the instant complaint, Covad concurrently filed with us a Motion for Stay Pending FCC Action.

On December 5, 2005, BellSouth filed an Agreed Motion for Extension of Time. On July 24, 2007, Covad and Bellsouth (now AT&T) executed a new interconnection agreement rendering its complaint moot. On July 27, 2007, Covad filed, and requested that we acknowledge, its Notice of Voluntary Dismissal with Prejudice.

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 acknowledge Covad's Notice of Voluntary Dismissal with Prejudice and close this docket.

ORDERED that Notice of Withdrawal with Prejudice is hereby acknowledged. It is further

ORDERED that this docket shall be closed.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

By ORDER of the Florida Public Service Commission this 17th day of October, 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 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 Office of Commission Clerk, 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 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.