

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth  
Telecommunications, Inc. against Thrifty Call,  
Inc. regarding practices in the reporting of  
percent interstate usage for compensation for  
jurisdictional access services.

DOCKET NO. 000475-TP  
ORDER NO. PSC-08-0464-FOF-TP  
ISSUED: July 21, 2008

The following Commissioners participated in the disposition of this matter:

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

ORDER ACKNOWLEDGING NOTICE  
OF VOLUNTARY DISMISSAL

BY THE COMMISSION:

I. Case Background

On April 21, 2000, BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida) filed a complaint against Thrifty Call, Inc. (Thrifty Call). AT&T Florida alleged that Thrifty Call intentionally and unlawfully reported erroneous Percent Interstate Usage (PIU) factors to AT&T in violation of AT&T Florida's Intrastate Access Tariff and the rules and regulations established by the Commission. AT&T Florida alleged that erroneous PIUs have resulted in the under reporting of intrastate access terminating minutes to AT&T Florida, causing AT&T Florida financial harm.

On August 20, 2001, Thrifty Call filed a Motion to Stay or in the Alternative, to Bifurcate the Proceedings (Motion to Stay). On August 28, 2001, Order No. PSC-01-1749-PCO-TP, Order Establishing Procedure, was issued. On September 4, 2001, AT&T Florida filed its Opposition to Thrifty Call's Motion to Stay. On November 21, 2001, Order No. PSC-01-2309-PCO-TP was issued, granting Thrifty Call's Motion to Stay.

On July 20, 2005, AT&T Florida filed a Motion to Lift Stay and Establish Procedural Schedule. On November 2, 2005, Order No. PSC-05-1100-PCO-TP, Order Granting AT&T Florida's Motion to Lift Stay and Establish Procedural Schedule, was issued. That same day Order No. PSC-05-1101-PCO-TP, Order Granting Motion to Withdraw as Counsel for Thrifty Call was issued. Thrifty Call was without counsel in this docket from November 2, 2005, to June 18, 2007.

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On June 5, 2007, AT&T Florida filed a Motion for Summary Final Order. On July 2, 2007, Thrifty Call filed its Response in Opposition to AT&T Florida's Motion for Summary Final Order and Motion for Continuance. On July 17, 2007, AT&T Florida filed a letter in response to Thrifty Call's Motion for Continuance. On December 28, 2007, Order No. PSC-07-1027-PCO-TP, Order Modifying Procedure, was issued. On March 11, 2008, AT&T Florida filed a Notice of Withdrawal of its Motion for Summary Final Order.

On May 19, 2008 a Prehearing Conference was held. The hearing was scheduled to convene on June 10, 2008; however, on June 9, 2008, the parties filed a Joint Motion for Continuance. The parties requested a continuance of the hearing for a two-week period to carry on with their settlement negotiations.

On June 17, 2008, the parties filed their Joint Notice of Settlement. The Joint Notice of Settlement stated that all claims and issues had been settled, stipulated to dismissal of this matter with prejudice, and requested that the docket be closed. We have jurisdiction, pursuant to Chapter 364, Florida Statutes.

## II. Analysis and Decision

It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.<sup>1</sup> Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter and cannot reinstate the action for any reason.<sup>2</sup> Both of these legal principles have been recognized in administrative proceedings.<sup>3</sup> Accordingly, AT&T Florida can dismiss its petition as a matter of right, which is in accord with our past decisions.<sup>4</sup>

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<sup>1</sup> Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975).

<sup>2</sup> Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978).

<sup>3</sup> Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1st DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2d DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123 (Fla. 2d DCA 1993) aff'd, 645 So. 2d 374 (Fla. 1994).

<sup>4</sup> See Order No. PSC-05-0724-FOF-TP, issued July 6, 2005, in Docket Nos. 040489-TP, In re: Emergency complaint seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by XO Florida, Inc. and Allegiance Telecom of Florida, Inc. (collectively, Joint CLECs) and 040520-TP, In re: Emergency petition seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by the Florida Competitive Carriers Association, AT&T Communications of the Southern States, LLC, MCImetro Access Transmission Services, LLC, and MCI WorldCom Communications, Inc.; Order No. PSC-02-0857-FOF-TP, issued June 24, 2002, in Docket No. 011615-TP, In re: Complaint of KMC Telecom, Inc. for enforcement of interconnection agreement with Sprint-Florida, Incorporated; But see Order No. PSC-07-0297-FOF-SU, issued April 9, 2007, in Docket No. 020640-SU, In re: Application for certificate to provide wastewater service in Lee County by Gistro, Inc. and Order No. PSC-96-0992-FOF-WS, issued August 5, 1996, in Docket No. 950758-WS, In Re: Petition for approval of transfer of facilities of Harbor Utilities Company, Inc., to Bonita Springs Utilities and cancellation of Certificates Nos. 272-W and 215-S in Lee County (voluntary dismissal cannot be utilized to divest the Commission as an adjudicatory agency of its jurisdiction granted to it by the legislature).

Therefore, we acknowledge the parties' Joint Notice of Settlement, stipulating to the dismissal of AT&T Florida's petition, with prejudice.

Because there is nothing further in the docket for this Commission to address, the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the parties' Joint Notice of Settlement, stipulating to the dismissal of AT&T Florida's petition, with prejudice, is hereby acknowledged. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of July, 2008.



ANN COLE  
Commission Clerk

( S E A L )

HFM

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

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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.