

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against MCI Communications Services, Inc. d/b/a Verizon Business Services for failure to pay intrastate access charges pursuant to Embarq's tariffs, by Embarq Florida, Inc.

DOCKET NO. 080308-TP
ORDER NO. PSC-09-0064-FOF-TP
ISSUED: January 29, 2009

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 DISMISSAL WITH PREJUDICE

BY THE COMMISSION:

I. Case Background

On June 6, 2008, Embarq Florida, Inc. ("Embarq") filed a complaint with the Florida Public Service Commission ("Commission") in which Embarq alleged that MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon") was failing to pay intrastate access charges pursuant to Embarq's tariffs.

On June 26, 2008, Verizon filed its Motion to Dismiss Complaint ("Motion") and Request for Oral Argument ("Request"). On July 1, 2008, Verizon filed a Supplement to its Motion.

On July 8, 2008, Embarq filed its Response to Verizon's Motion.

We granted Verizon's Request and then heard oral argument on Verizon's Motion at the Commission's October 28, 2008, Agenda Conference. By Order No. PSC-08-0752-PCO-TP, issued on November 13, 2008, we denied Verizon's Motion.

On December 18, 2008, Embarq filed a Notice of Dismissal with Prejudice ("Notice") in which Embarq 1) advised this Commission that the parties have settled the issues in the docket and 2) asked that this docket be closed.

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II. Analysis and Decision

A plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So.2d 578, 579 (Fla. 1975). Once a timely voluntary dismissal is taken, the trial court loses its jurisdiction to act on a matter. Randle Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68, 69 (Fla. 1978). In its Notice, Embarq states that "the parties have settled the issues in this docket. Accordingly, no further action is necessary in this matter." As such, we find it appropriate to acknowledge Embarq's Notice and close this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Embarq Florida, Inc.'s December 18, 2008, Notice of Dismissal with Prejudice is hereby acknowledged. It is further,

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 29th day of January, 2009.



ANN COLE
Commission Clerk

(S E A L)

CWM

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.