

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast for anticompetitive behavior in violation of Sections 364.01(4), 364.10(1), and 364.3381, F.S., violating terms of interconnection agreement, and engaging in cramming in violation of Sections 354.604(2), 364.10(1), F.S., and Rule 25-4.110(18), F.A.C., by Cbeyond Communications, LLC.

DOCKET NO. 090135-TP
ORDER NO. PSC-09-0801-FOF-TP
ISSUED: December 3, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
NANCY ARGENZIANO
NATHAN A. SKOP
DAVID E. KLEMENT

ORDER CLOSING DOCKET

BY THE COMMISSION:

Case Background

On March 18, 2009, Cbeyond Telecommunications, LLC ("Cbeyond") filed its Complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast ("AT&T") for Anticompetitive Behavior, Violation of Interconnection Agreement, and Request for Investigation ("Complaint"). In its Complaint, Cbeyond asserts that AT&T is engaging in anticompetitive behavior in violation of Sections 364.01(4), 364.10(1), and 364.3381, Florida Statutes ("F.S."), violating the terms of the parties' interconnection agreement, and violating Sections 364.604(2) and 364.10(1), F.S., and Rule 25-4.110(18), Florida Administrative Code ("F.A.C."), relating to cramming.

On April 7, 2009, AT&T filed a Partial Motion to Dismiss and Answer to Cbeyond's Complaint. On April 14, 2009, Cbeyond filed its Response to AT&T's Partial Motion to Dismiss ("Response"). By Order No. PSC-09-0382-PCO-TP, issued on May 29, 2009, the Florida Public Service Commission ("Commission") denied AT&T's Partial Motion to Dismiss. An Issue Identification Conference was held on August 26, 2009. By Order No. PSC-09-0653-PCO-TP, issued on September 30, 2009, this Commission established procedure and scheduled a hearing for March 17, 2010, to resolve the issues presented in this matter. On November 4, 2009, Cbeyond filed its Notice of Voluntary Dismissal of Complaint without Prejudice ("Notice of Voluntary Dismissal").

DOCUMENT NUMBER-DATE

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Discussion

In its Notice of Voluntary Dismissal, Cbeyond asks this Commission to dismiss without prejudice the Cbeyond Complaint.

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). The voluntary dismissal by Cbeyond is without prejudice. See Rule 1.420(1), Florida Rules of Civil Procedure.

Upon review, we hereby acknowledge Cbeyond's Notice of Voluntary Dismissal and close Docket No. 090135-TP.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Cbeyond Telecommunications, LLC's Notice of Voluntary Dismissal is acknowledged. It is further,

ORDERED that Docket No. 090135-TP is closed.

By ORDER of the Florida Public Service Commission this 3rd day of December, 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.