

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Budget Prepay, Inc. against
BellSouth Telecommunications, LLC d/b/a
AT&T Florida.

DOCKET NO. 120231-TP
ORDER NO. PSC-13-0128-FOF-TP
ISSUED: March 15, 2013

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER GRANTING MOTION TO DISMISS COMPLAINT AND COUNTERCLAIM
WITH PREJUDICE

BY THE COMMISSION:

I. Case Background

On August 28, 2012, pursuant to Section 364.16, Florida Statutes (F.S.), and Rules 25-22.036 and 28-106.201, Florida Administrative Code (F.A.C.), Budget Prepay, Inc. (Budget) filed a complaint against BellSouth Telecommunications, LLC d/b/a AT&T Florida (AT&T FL or Company) for "imposing an unlawful restriction on the resale of bundled local and long distance cash back promotions" and "engaging in actions that are preferential, discriminatory and anti-competitive." (Complaint).

On September 17, 2012, pursuant to Rule 28-106.203, F.A.C., AT&T FL filed its Answer and Counterclaim to the Budget Complaint (Answer and Counterclaim), in which AT&T FL asserted that Budget had breached the interconnection agreement (ICA) by withholding payment for services it had ordered from AT&T FL under the ICA. AT&T FL asked the Florida Public Service Commission (Commission) to require Budget to pay AT&T FL the full amount it has wrongfully withheld, or at least to pay the amount into escrow pending the outcome of this proceeding.

Additional substantive filings in this Docket include the following: Budget's October 8, 2012 Motion to Dismiss Counterclaim; AT&T FL's October 15, 2012 Response in Opposition to Budget's Motion to Dismiss Counterclaim; AT&T FL's October 19, 2012 Notice of Commencement of Collection Action (Notice), and; Budget's November 7, 2012 Response to AT&T FL's Notice of Commencement of Collection Action (Response).

Issues related to AT&T's Notice and Budget's Response were scheduled to be considered at our November 27, 2012 Agenda Conference. However, on November 26, 2012, our staff's

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recommendation addressing the matter was withdrawn pursuant to a request by counsel for AT&T and Budget who indicated that the Parties had resolved their differences and needed time to memorialize and execute a settlement agreement.

On February 6, 2013, pursuant to Rule 28-106.204, F.A.C., the Parties filed a Joint Motion to Dismiss Complaint and Counterclaim (Joint Motion to Dismiss with Prejudice) in which the Parties "request that their respective claims be dismissed with prejudice, that each party bear its own costs and fees, and that this docket be closed." We have jurisdiction pursuant to Sections 364.01 and 364.16, F.S.

II. Decision

In their Joint Motion to Dismiss with Prejudice, the Parties have requested: that the Commission dismiss with prejudice Budget's Complaint and AT&T's Counterclaim; that each party bear its own costs and fees; and, that this docket be closed.

The Parties appear to have resolved their differences related to the Budget Complaint and AT&T Counterclaim. As such, nothing remains to be done by this Commission in this docket. Therefore we shall grant the Parties' Joint Motion to Dismiss with Prejudice as follows: the Budget Complaint and AT&T Counterclaim shall be dismissed with prejudice; each party shall bear its own costs and fees; and, the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Motion to Dismiss with Prejudice, filed by Budget Prepay, Inc. and BellSouth Telecommunications, LLC d/b/a AT&T Florida, is hereby granted. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission this 15th day of March, 2013.



DOROTHY E. MENASCO
Commission Deputy Clerk II
Florida Public Service Commission
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Tallahassee, Florida 32399
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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.