

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration
concerning complaint of IDS
Telcom LLC against BellSouth
Telecommunications, Inc.
regarding breach of
interconnection agreement.

DOCKET NO. 010740-TP
ORDER NO. PSC-01-2191-FOF-TP
ISSUED: November 8, 2001

The following Commissioners participated in the disposition of
this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

ORDER ON DISMISSAL

BY THE COMMISSION:

On May 11, 2001, IDS Long Distance, Inc. n/k/a IDS Telecom, LLC (IDS) filed a Complaint and Request for Emergency Relief against BellSouth Telecommunications, Inc. (BellSouth). IDS raised four counts against BellSouth: (1) BellSouth breached the interconnection agreement by failing to provide IDS Operational Support Systems (OSS) and Unbundled Network Elements (UNEs) at parity; (2) BellSouth perpetrated an anticompetitive campaign of "win back" tactics against IDS, including the Full Circle Program and fraudulent telemarketing schemes; (3) BellSouth permitted the sharing of IDS' customer proprietary network information between its retail and wholesale divisions in violation of the Telecommunications Act of 1996; and (4) the Commission should immediately initiate a show cause proceeding to investigate and sanction BellSouth for its anticompetitive activities that have harmed citizens of the State of Florida. BellSouth filed a response and the matter was set for hearing. After the first day of hearing, on September 28, 2001, IDS filed a Notice of Voluntary Dismissal with Prejudice.

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The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So.2d 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 So.2d 68, 69 (Fla. 1978).

We acknowledge IDS' voluntary dismissal with prejudice and find that IDS' Motion to Compel Better Responses to its Requests for Production and Interrogatories filed September 21, 2001, is rendered moot by IDS' voluntary dismissal.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that IDS Long Distance, Inc. n/k/a IDS Telecom, LLC's Notice of Voluntary Dismissal with Prejudice of its complaint against BellSouth Telecommunications, Inc. is acknowledged. It is further

ORDERED that IDS Long Distance, Inc. n/k/a IDS Telecom's Motion to Compel Better Responses to its Requests for Production and Interrogatories is rendered moot. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 8th day of November, 2001.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

AJT

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 Director, Division of the Commission Clerk and Administrative Services, 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 Director, Division of the Commission Clerk and Administrative Services 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.