

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth Telecommunications, Inc. against VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications regarding practices in the reporting of percent interstate usage for compensation for jurisdictional access services.

DOCKET NO. 011374-TP  
ORDER NO. PSC-02-0814-FOF-TP  
ISSUED: June 14, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

ORDER ACKNOWLEDGING NOTICE OF VOLUNTARY  
DISMISSAL OF COMPLAINT

On October 18, 2001, BellSouth Telecommunications, Inc. (BellSouth) filed a complaint against VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications (VarTec) regarding practices in the reporting of percent interstate usage for compensation for jurisdictional access services.

On November 13, 2001, VarTec filed with this Commission a Notice of Removal to the United States District Court for the Northern District of Florida. On February 19, 2002, the Court remanded the case to this Commission. On March 29, 2002, VarTec filed a Motion to Dismiss the Complaint.

By Order No. PSC-02-0491-PCO-TP, issued April 10, 2002, BellSouth was granted a fourteen day extension in which to file its response. On April 24, 2002, BellSouth filed its response to the Motion to Dismiss.

On May 17, 2002, BellSouth filed a Notice of Voluntary Dismissal of Complaint withdrawing and voluntarily dismissing with prejudice, its complaint against VarTec.

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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). Therefore, we hereby acknowledge BellSouth's withdrawal of its Complaint against VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications. The outstanding Motion to Dismiss filed by VarTec is rendered moot.

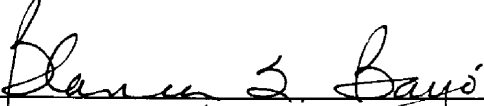
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Notice of Voluntary Dismissal of Complaint is hereby acknowledged. It is further

ORDERED that the outstanding Motion to Dismiss filed by VarTec Telecom, Inc. d/b/a VarTec Telecom and Clear Choice Communications is rendered moot. It is further

ORDERED that the Docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th Day of June, 2002.

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

( S E A L )

JKF

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.