

State of Florida



Public Service Commission

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DATE: April 8, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Christensen) *ack*
Division of Competitive Markets & Enforcement (Barrett, King) *McB*

RE: Docket No. 030467-TP – Petition by XO Florida, Inc. for arbitration of certain unresolved issues in negotiations for interconnection and resale agreement with Sprint-Florida, Incorporated.

AGENDA: 04/20/04 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030467.RCM.DOC

Case Background

On May 29, 2003, XO Florida, Inc. (XO) filed a petition for arbitration of certain unresolved issues in negotiations for an interconnection and resale agreement with Sprint-Florida, Incorporated (Sprint). On the same date, Sprint filed a duplicate petition. On June 6, 2003, Sprint filed a letter it had received from XO, which stated that XO planned to file an amended petition and that Sprint would withdraw the petition it had submitted. On June 13, 2003, XO filed its amended petition, resolving the differences between the two petitions. On June 23, Sprint filed its response to XO's petition. An issue identification meeting was held on July 16, 2003. At the conclusion of the issue identification meeting, the parties agreed to all of the issues except Issues 25, 26, and 27. By Order No. PSC-03-0865-PCO-TP (Order Establishing Procedure), issued July 24, 2004, established the procedure in this docket. The Order Establishing Procedure was revised twice by Order No. PSC-03-0936-PCO-TP, issued August 15, 2003, and Order No. PSC-03-1013-PCO-TP, issued September 9, 2003.

DOCUMENT NUMBER-DATE

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On September 29, 2003, XO and Sprint filed a joint motion for extension of time to file direct testimony because the parties stated that they were close to resolving all of the issues remaining in this arbitration. By Order No. PSC-03-1093-PCO-TP, issued October 2, 2003, the parties' request for extension of time was granted. Since the parties appeared close to reaching a settlement, in that Order the procedural dates were suspended until November 1, 2003, the hearing dates were cancelled, and new procedural dates were to be reestablished at a later date.

On October 29, 2003, XO's counsel filed a letter indicating that on October 24, 2003, the parties had reached a settlement agreement in this docket. The letter stated that Sprint filed a Notice of adoption of the interconnection, unbundling, and resale agreement, and amendment between Sprint and Level 3 Communications, LLC, in Docket No. 031002-TP. XO stated that it would withdrawal its Petition for Arbitration once its new agreement became effective. On February 12, 2004, XO filed its Notice of Voluntary Dismissal. This recommendation addresses XO's Notice of Voluntary Dismissal.

Docket No. 030467-TP
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Discussion of Issues

Issue 1: Should the Commission acknowledge XO Florida, Inc.'s Notice of Voluntary Dismissal and close this docket?

Recommendation: Yes. (CHRISTENSEN)

Staff Analysis: As noted in the Case Background, XO filed its Notice of Voluntary Dismissal. 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, staff recommends that the Commission acknowledge XO's Notice of Voluntary Dismissal of its Petition. Since no further Commission action is necessary, staff recommends that this docket be closed.