

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint and petition by CAT Communications International, Inc. against BellSouth Telecommunications, Inc. for alleged unlawful emergency telephone service charge and telecommunications relay service charges.

DOCKET NO. 040026-TP
ORDER NO. PSC-04-0500-FOF-TP
ISSUED: May 14, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER GRANTING
MOTION FOR SUMMARY FINAL ORDER

BY THE COMMISSION:

I. BACKGROUND

CAT Communications International, Inc. (CCI) currently purchases and resells BellSouth Telecommunications, Inc. (BellSouth) services pursuant to a resale agreement entered into between CCI and BellSouth on November 6, 2002. The Agreement was approved by this Commission by operation of Section 252(e)(4) of the Telecommunications Act of 1996 on March 10, 2003. On January 8, 2004, CCI filed a complaint against BellSouth for alleged unlawful collection of emergency telephone service charges and telecommunications relay service charges. On January 23, 2004, BellSouth filed a Motion to Dismiss Complaint on the grounds that CCI failed to state a claim for which this Commission may grant relief. CCI did not file a response to BellSouth's Motion to Dismiss. Thereafter, on March 9, 2004, BellSouth filed a Motion for Summary Final Order. CCI also failed to respond to this motion. This Order addresses primarily the Motion for Summary Final Order.

II. MOTION FOR SUMMARY FINAL ORDER

In its complaint, CCI asserts that BellSouth inappropriately collects 911 fees and telecommunications access system surcharges from it. CCI states that it collects these charges from its end users, and therefore, should be allowed to retain the associated administrative fees allowed under Sections 365.171 and 427.704, Florida Statutes. CCI requests that this

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Commission direct BellSouth to cease and desist from charging or collecting 911 and other surcharges from it.

In the Motion for Summary Final Order, BellSouth claims that it appropriately collects 911 fees and telecommunications access system surcharges from CCI, as provided for in the Interconnection Agreement (Agreement) between the parties. Section 1.1.5 of the Agreement between the parties clearly delineates the process by which all charges applicable to resold service will be collected. While BellSouth does not refute any of the facts stated by CCI, BellSouth asserts that it retains the associated administrative fees allowed under Sections 365.171 and 427.704, Florida Statutes, due to the provisions contained within Section 1.1.5 of the parties' Agreement.

Rule 28-106.204(4), Florida Administrative Code, provides:

Any party may move for summary final order whenever there is no genuine issue as to any material fact. The motion may be accompanied by supporting affidavits. All other parties may, within seven days of service, file a response in opposition, with or without supporting affidavits. A party moving for summary final order later than twelve days before the final hearing waives any objection to the continuance of the final hearing.

The standard for granting a summary final order is very high. The purpose of summary judgment, or in this instance summary final order, is to avoid the expense and delay of trial when no dispute exists concerning the material facts. The record is reviewed in the light most favorable to the party against whom the summary judgment is to be entered. When the movant presents a showing that no material fact on any issue is disputed, the burden shifts to his opponent to demonstrate the falsity of the showing. If the opponent does not do so, summary judgment is proper and should be affirmed. The question for determination on a motion for summary judgment is the existence or nonexistence of a material factual issue. There are two requisites for granting summary judgment: first, there must be no genuine issue of material fact, and second, one of the parties must be entitled to judgment as a matter of law on the undisputed facts. See, Trawick's Florida Practice and Procedure, §25-5, Summary Judgment Generally, Henry P. Trawick, Jr. (1999).

Further, under Florida law, "the party moving for summary judgment is required to conclusively demonstrate the nonexistence of an issue of material fact, and . . . every possible inference must be drawn in favor of the party against whom a summary judgment is sought." Green v. CSX Transportation, Inc., 626 So. 2d 974 (Fla. 1st DCA 1993)(citing Wills v. Sears, Roebuck & Co., 351 So. 2d 29 (Fla. 1977)). Furthermore, "A summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law." Moore v. Morris, 475 So. 2d 666 (Fla. 1985); City of Clermont, Florida v. Lake City Utility Services, Inc., 760 So. 1123 (5th DCA 2000).

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We find that BellSouth has met the standard necessary to grant a motion for a summary final order. Furthermore, a summary final order is appropriate in this instance because this is a contract issue and the language in the Agreement is clear. See Order No. PSC-00-1540-FOF-TP and Shafer & Miller v. Miami Heart Inst., 237 So.2d 310 (Fla. 3rd DCA 1970). Based on the pleadings, there are no disputes of fact and as a matter of law BellSouth is entitled to judgment in this matter. The collection of all charges applicable to resold services, including 911 fees and telecommunications access system surcharges, is covered in Section 1.1.5 of Attachment 7 of the Agreement between BellSouth and CCI. The substance of CCI's complaint is the exact activity agreed to in the Agreement between the two parties. BellSouth has made a conclusive showing that there is no genuine issue of material fact in dispute and that it is entitled to judgment as a matter of law on the undisputed facts. CCI does not dispute that the section is applicable and dispositive of the question. As such, we find that BellSouth's Motion for Summary Final Order shall be granted. Accordingly, BellSouth's Motion to Dismiss is rendered moot.


Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Motion for Summary Final Order is hereby granted. It is further

ORDERED that BellSouth Telecommunications, Inc.'s Motion to Dismiss is rendered moot. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of May, 2004.



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

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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.