

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. and Network Telephone Corporation by Z-Tel Communications, Inc.

DOCKET NO. 040779-TP
ORDER NO. PSC-05-1125-FOF-TP
ISSUED: November 8, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR

ORDER ACKNOWLEDGING JOINT WITHDRAWAL

Case Background

Z-Tel Communications, Inc.'s (Z-Tel) existing interconnection agreement with BellSouth Telecommunications, Inc. (BellSouth) in Florida became effective on April 18, 2003 and expired on September 11, 2004. In the course of discussions between the parties for a successor agreement, Z-Tel opted to adopt a new agreement rather than to attempt to renegotiate terms of their existing agreement.

On July 23, 2004, Z-Tel filed its Notice of Adoption of the interconnection agreement between BellSouth and Network Telephone Corporation (Network). On August 5, 2004, BellSouth filed a letter in opposition to Z-Tel's Notice of Adoption. On August 25, 2004, Z-Tel filed a reply to BellSouth's letter in opposition in which they addressed the arguments raised by BellSouth. On September 2, 2004, BellSouth filed a letter accompanying a copy of the FCC's Interim Rules Order. On September 7, 2004, Z-Tel filed a response letter to BellSouth's letter and filing of the FCC's Interim Rules Order.

By Order No. PSC-05-0158-PAA-TP, issued February 9, 2005, this Commission accepted the Notice of Adoption. Subsequently, on March 2, 2005, BellSouth filed a protest of this Commission's Order and requested the matter be set for hearing.

Our staff conducted a series of conference calls with the parties aimed at resolving the dispute. The parties agreed to a stipulation of the facts and reached agreement that an abbreviated procedure consistent with Section 120.57(2), Florida Statutes, would be appropriate. In view of the parties' Joint Stipulation of Facts, an abbreviated schedule was approved by Order No. PSC-05-0846-PCO-TP, issued August 18, 2005.

DOCUMENT NUMBER - DATE

10785 NOV-8 05

FPSC-COMMISSION CLERK

On September 2, 2005, BellSouth filed a Joint Motion for Withdrawal, wherein BellSouth notes that the parties have reached agreement. As such, BellSouth withdraws its protest of Order No. PSC-05-0158-PAA-TP, and Trinsic Communications (formerly known as Z-Tel Communications) withdraws its original Notice of Adoption, which initiated this Docket. The parties request that this proceeding be terminated.

The parties indicate that they have reached an agreement whereby they will continue to operate under the terms of their current interconnection agreement pending the outcome of Docket No. 041269-TP, Petition to establish generic docket to consider amendments to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc. In withdrawing its protest of this Commission's Order, BellSouth also withdraws its request for a hearing in this matter. Furthermore, the petitioner, Trinsic (f/k/a Z-Tel), is withdrawing its original notice of adoption.

Withdrawal of the protest negates the need for a hearing in this matter. Furthermore, the law is clear that the petitioner'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). Since there are no remaining issues in dispute between the parties in this docket, we find it appropriate that the Joint Motion for Withdrawal be acknowledged and this Docket be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Motion for Withdrawal filed by BellSouth Telecommunications, Inc., is hereby acknowledged. It is further

ORDERED that this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 8th day of November, 2005.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(SEAL)

JPR

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.