

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 1, 2007

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

FROM: Office of the General Counsel (Fudge) *RF DKW*
Division of Competitive Markets & Enforcement (Lee) *PLZ*

RE: Docket No. 060083-TP – Complaint of Northeast Florida Telephone Company d/b/a NEFCOM against Southeastern Services, Inc. for alleged failure to pay intrastate access charges pursuant to NEFCOM's tariffs, and for alleged violation of Section 364.16(3)(a), F.S. *MS*

Docket No. 060296-TP – Referral by the Circuit Court of Baker County, Florida to determine whether or not Southeastern Services, Inc. is legally responsible for payment to Northeast Florida Telephone for originating intrastate access charges under Northeast Florida Telephone's Public Service Commission approved tariff for the long distance calls provided by Southeastern Services, Inc. as alleged in the Amended Complaint.

AGENDA: 03/13/07 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: Panel - Carter, ~~McMurrian~~

PREHEARING OFFICER: McMurrian

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060083.RCM.DOC

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Case Background

On September 4, 2003, Northeast Florida Telephone Company (NEFCOM) filed a civil suit against Southeastern Services, Inc. (SSI) in the Circuit Court of the Eighth Judicial Circuit

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for Baker County, Florida, pursuant to the parties' dispute resolution agreement.¹ The suit involves a dispute over the payment of access charges for alleged Voice over Internet Protocol (VoIP) traffic provided by SSI to its customers.

On January 30, 2006, NEFCOM filed with this Commission its Complaint against SSI alleging (1) failure to pay intrastate access charges pursuant to NEFCOM's tariffs and (2) violation of Section 364.16(3)(a), Florida Statutes. Docket No. 060083-TP was established to address the complaint.

On February 28, 2006, the Baker County Circuit Court entered an Order referring to this Commission the question: "Whether or not Southeastern Services, Inc. is legally responsible for payment to Northeast Florida Telephone Company for originating intrastate access charges under Northeast Florida's Public Service Commission approved tariff for the long distance calls provided by Southeastern Services, Inc. as alleged in the Amended Complaint." Docket No. 060296-TP was opened in light of this referral from the Circuit Court of Baker County.

On March 27, 2006, NEFCOM filed its Amended Complaint that withdrew the portions of its original complaint alleging violations of Section 364.16(3), F.S., and requesting assessment of penalties against SSI. On June 14, 2006, this Commission issued Order No. PSC-06-0506-PCO-TP consolidating Docket Nos. 060083-TP and 060296-TP.

On August 4, 2006, the parties filed an Unopposed Joint Motion for Abatement and Continuance, which was granted by Order No. PSC-06-0687-PCO-TP, issued August 9, 2006. Pursuant to the terms of their Settlement Agreement, the parties agreed that upon fulfillment of the Settlement Agreement, but no later than October 9, 2006, NEFCOM would file a Notice of Voluntary Dismissal with Prejudice of its Amended Complaint in Docket No. 060083-TP, and the parties would collectively file a Joint Motion to Dismiss the Referral from the Circuit Court of Baker County in Docket No. 060296-TP.

On October 9, 2006, the parties filed their Joint Motion to Dismiss the Referral from the Circuit Court in Baker County in Docket No. 060296-TP, and NEFCOM filed its Notice of Voluntary Dismissal with Prejudice of its Amended Complaint filed in Docket No. 060083-TP. On October 11, 2006, the parties filed a Stipulation for Voluntary Dismissals with Prejudice of Amended Complaint and First Amended Counterclaim (Including Corrected First Amended Counterclaim).

On February 6, 2007, staff received notice from counsel for NEFCOM that the underlying circuit court case has been closed in response to the Stipulation for Voluntary Dismissals filed on October 13, 2006.

¹Northeast Florida Telephone Company v. Southeastern Services, Inc., Case No. 02-2003-CA-0141.

Discussion of Issues

Issue 1: Should the Commission grant the parties' Joint Motion to Dismiss the Referral from the Circuit Court in Baker County?

Recommendation: Yes. The underlying circuit court case upon which the referral to this Commission was based has been dismissed. (Fudge)

Staff Analysis: Docket No. 060296-TP was opened upon a referral from the Circuit Court of Baker County. Staff has confirmed with the Circuit Court in Baker County that the underlying docket was closed on October 13, 2006.

The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So2d 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 So2d 68, 69 (Fla. 1978). Therefore, staff recommends that the Commission grant the Joint Motion to Dismiss the Referral from the Circuit Court in Baker County.

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Issue 2: Should the Commission acknowledge NEFCOM's Notice of Voluntary Dismissal With Prejudice of its Amended Complaint filed in Docket No. 060083-TP?

Recommendation: Yes. The Commission should acknowledge NEFCOM's Notice of Voluntary Dismissal With Prejudice. (Fudge)

Staff Analysis: The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So2d 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 So2d 68, 69 (Fla. 1978). Therefore, staff recommends that the Commission acknowledge NEFCOM's Notice of Voluntary Dismissal With Prejudice.

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Issue 3: Should these dockets be closed?

Recommendation: With the Joint Motion to Dismiss and request that Docket No. 060083-TP be closed, there are no further matters for this Commission to adjudicate in Docket No. 060083-TP and, therefore, it should be closed. Likewise, with the closing of the underlying circuit court action, Docket No. 060296-TP should be closed. (Fudge)

Staff Analysis: With the Joint Motion to Dismiss and request that Docket No. 060083-TP be closed, there are no further matters for this Commission to adjudicate in Docket No. 060083-TP and, therefore, it should be closed. Likewise, with the closing of the underlying circuit court action, Docket No. 060296-TP should be closed.