

State of Florida



Public Service Commission

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COMMISSION
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DATE: January 11, 2012

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Tan)
Division of Regulatory Analysis (King) *AT&T*

RE: Docket No. 110071-TP – Emergency Complaint of Express Phone Service, Inc. against Bellsouth Telecommunications, Inc. d/b/a AT&T Florida regarding interpretation of the parties' interconnection agreement.

AGENDA: 01/24/12 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Balbis

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\110071.RCM.DOC

Case Background

Express Phone Service, Inc. (Express Phone) filed a complaint against Bellsouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida) (Complaint) on March 15, 2011.¹ The Complaint alleges that AT&T Florida improperly disrupted Express Phone's service order provisioning, and cut off all services to existing Express Phone customers due to billing disputes arising out of the parties' Interconnection Agreement (ICA).² Order No. PSC-11-0291-

¹ Emergency Complaint, Request for Emergency Relief to Avoid Customer Disconnection, Request to Hold Docket in Abeyance, and Request for Mediation against BellSouth Telecommunications, Inc. d/b/a AT&T Florida.

² Express Phone states that the billing disputes stem from the calculation/application of promotional credits for resold services.

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PAA-TP, issued July 6, 2011, established that this docket should be set for an evidentiary hearing.

On December 14, 2011, Express Phone's Request for Abeyance was denied by Order No. PSC-11-0574-PCO-TP.³ The Order stated that if Express Phone did not wish to proceed, the company may withdraw its complaint without prejudice and refile at a later date.

On December 27, 2011, Express Phone filed a Voluntary Dismissal without Prejudice of its March 15, 2011, Complaint. On January 3, 2012, AT&T Florida filed a letter that does not oppose Express Phone's request but states that the dismissal of this docket should be without prejudice to both parties. AT&T Florida asserts that the voluntary dismissal does not bar AT&T Florida in any proceeding from pursuing arguments raised during the course of this proceeding or from pursuing a counterclaim or separate complaint. AT&T Florida further states that the legal holdings rendered by the Commission in this docket should be considered law. On January 5, 2012, Express Phone filed a letter in response, stating that if the complaint is refiled, the Commission should determine the propriety of any issues, legal or factual.

This recommendation addresses Express Phone's voluntary dismissal. The Commission is vested with jurisdiction over this matter pursuant to Chapter 364, Florida Statutes.

³ Express Phone's Request for Abeyance was filed on November 10, 2011.

Discussion of Issues

Issue 1: Should the Commission acknowledge Express Phone Service's December 27, 2011, Notice of Voluntary Dismissal without Prejudice?

Recommendation: Yes, the Commission should acknowledge Express Phone's December 27, 2011, Notice of Voluntary Dismissal without Prejudice. (Tan)

Staff Analysis: The law is clear that a plaintiff's right to take a voluntary dismissal is absolute⁴ and once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.⁵ Both of these legal principles have been recognized in administrative proceedings⁶ and are consistent with past Commission decisions.⁷ Staff recommends that the Commission acknowledge Express Phone's voluntary dismissal without prejudice of its petition as a matter of right.

⁴ Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975)

⁵ Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978)

⁶ Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1st DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2d DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123 (Fla. 2d DCA 1993) *aff'd*, 645 So. 2d 374 (Fla. 1994).

⁷ See Order No. PSC-11-0453-FOF-EI, issued October 10, 2011, in Docket No. 100358-EI, In re: Investigation into the design of Commercial Time-of-Use rates by Florida Power & Light, pursuant to Order No. PSC-10-0153-FOF-EI; Order No. PSC-10-0248-FOF-EQ, issued April 22, 2010, in Docket No. 090146-EQ, In Re: Petition by Tampa Electric Company for approval of extension of small power production agreement with City of Tampa; Order No. PSC-08-0822-FOF-WS, issued December 22, 2008, in Docket No. 080500-WS, In Re: Application for transfer of majority organizational control of Indiantown Company Inc., holder of Certificate Nos. 387-W and 331-S in Martin County, from Postco, Inc. to First Point Realty Holdings, LLC; Order No. PSC-08-0493-FOF-TP, In Docket 070408-TP, In re: Petition by Neutral Tandem, Inc. and Neutral Tandem-Florida, LLC for resolution of interconnection dispute with Level 3 Communications, LLC, and request for expedited resolution.

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Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, there is nothing further for the Commission to consider in this docket. Therefore, staff recommends that Docket No. 110071-TP be closed.
(Tan)

Staff Analysis: If Issue 1 is approved, there is nothing further for the Commission to consider in this docket. Therefore, staff recommends that Docket No. 110071-TP be closed.