

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency Complaint of Express Phone Service, Inc. against Bellsouth Telecommunications, Inc. d/b/a AT&T Florida regarding interpretation of the parties' interconnection agreement.

DOCKET NO. 110071-TP
ORDER NO. PSC-12-0051-FOF-TP
ISSUED: February 3, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER ACKNOWLEDGING VOLUNTARY DISMISSAL WITHOUT PREJUDICE

BY THE COMMISSION:

I. 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-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

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.

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

DOCUMENT NUMBER-DATE

00703 FEB-3 2012

FPSC-COMMISSION CLERK

or from pursuing a counterclaim or separate complaint. AT&T Florida further states that the legal holdings rendered by this 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, this Commission should determine the propriety of any issues, legal or factual.

We are vested with jurisdiction over this matter pursuant to Chapter 364, Florida Statutes.

II. Decision

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 our past decisions.⁷ Therefore, we find it appropriate to acknowledge Express Phone's voluntary dismissal without prejudice of its petition as a matter of right.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Express Phone's Voluntary Dismissal without Prejudice is hereby acknowledged. It is further

ORDERED that this docket shall be closed.

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.

By ORDER of the Florida Public Service Commission this 3rd day of February, 2012.



HONG WANG
Chief Deputy Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

TLT

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 Office of Commission Clerk, 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 Office of Commission Clerk, 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.