

State of Florida



Public Service Commission
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DATE: February 21, 2013

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Murphy) *CMF*
Office of Telecommunications (Bates, Foglenfan, Hawkins) *CS888*

RE: Docket No. 120231-TP – Complaint of Budget Prepay, Inc. against BellSouth Telecommunications, LLC d/b/a AT&T Florida.

AGENDA: *3/5/13-ac* ~~02/07/13~~ – Regular Agenda – Joint Motion to Dismiss with Prejudice – Oral Argument Not Requested

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\120231.RCM.DOC

Case Background

On August 28, 2012, pursuant to Section 364.16, Florida Statutes (F.S.), and Rules 25-22.036 and 28-106.201, Florida Administrative Code (F.A.C.), Budget Prepay, Inc. (Budget) filed a complaint against BellSouth Telecommunications, LLC d/b/a AT&T Florida (AT&T FL or Company) for “imposing an unlawful restriction on the resale of bundled local and long distance cash back promotions” and “engaging in actions that are preferential, discriminatory and anti-competitive.” (Complaint).

On September 17, 2012, pursuant to Rule 28-106.203, F.A.C., AT&T FL filed its Answer and Counterclaim to the Budget Complaint (Answer and Counterclaim), in which AT&T FL asserted that Budget had breached the interconnection agreement (ICA) by withholding payment

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for services it had ordered from AT&T FL under the ICA. AT&T FL asked the Commission to require Budget to pay AT&T FL the full amount it has wrongfully withheld, or at least to pay the amount into escrow pending the outcome of this proceeding.

Additional substantive filings in this Docket include the following: Budget's October 8, 2012 Motion to Dismiss Counterclaim; AT&T FL's October 15, 2012 Response in Opposition to Budget's Motion to Dismiss Counterclaim; AT&T FL's October 19, 2012 Notice of Commencement of Collection Action (Notice), and; Budget's November 7, 2012 Response to AT&T FL's Notice of Commencement of Collection Action (Response).

Issues related to AT&T's Notice and Budget's Response were scheduled to be considered by the Commission at its November 27, 2012 Agenda Conference. However, on November 26, 2012, the Commission staff recommendation addressing the matter was withdrawn pursuant to a request by counsel for AT&T and Budget who indicated that the Parties had resolved their differences and needed time to memorialize and execute a settlement agreement.

On February 6, 2013, pursuant to Rule 28-106.204, F.A.C., the Parties filed a Joint Motion to Dismiss Complaint and Counterclaim (Joint Motion to Dismiss with Prejudice) in which the Parties "request that their respective claims be dismissed with prejudice, that each party bear its own costs and fees, and that this docket be closed." The Commission has jurisdiction pursuant to Sections 364.01 and 364.16, F.S.

Discussion of Issues

Issue 1: Should the Commission grant the Parties' Joint Motion to Dismiss with Prejudice and close the docket?

Recommendation: Yes. The Commission should grant the Parties' Joint Motion to Dismiss with Prejudice and close the docket. (Murphy)

Staff Analysis: In their Joint Motion to Dismiss with Prejudice, the Parties have requested: that the Commission dismiss with prejudice Budget's Complaint and AT&T's Counterclaim; that each party bear its own costs and fees; and, that this docket be closed.

The Parties appear to have resolved their differences related to the Budget Complaint and AT&T Counterclaim. As such, nothing remains to be done by the Commission in this docket. Thus, staff recommends that the Parties' Joint Motion to Dismiss with Prejudice should be granted as follows: the Budget Complaint and AT&T Counterclaim should be dismissed with prejudice; each party should bear its own costs and fees; and, the docket should be closed.