

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for  
determination as to whether  
sufficient justification exists  
to implement Emergency Service  
Continuity Plan tariff and, if  
so, for emergency waiver of Rule  
25-4.118, F.A.C., by BellSouth  
Telecommunications, Inc.

DOCKET NO. 021062-TL  
ORDER NO. PSC-03-0061-FOF-TL  
ISSUED: January 8, 2003

The following Commissioners participated in the disposition of  
this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

ORDER ACKNOWLEDGING WITHDRAWAL OF PETITION

BY THE COMMISSION:

CASE BACKGROUND

On October 21, 2002, the Petition by BellSouth Telecommunications, Inc. for Implementation of BellSouth's Emergency Service Continuity Tariff and Emergency Rule Waiver was filed with the Commission. BellSouth asserts that its Emergency Service Continuity Plan (ESCPT) (Section A5.8 of BellSouth's General Subscriber Service Tariff), as filed on August 6, 2002, is intended to address the situation where BellSouth has chosen to discontinue service to an ALEC that has effectively abandoned its end user customers or when some other sufficient emergency exists.

On October 23, 2002, Supra Telecommunications and Information Systems filed a Notice of Voluntary Bankruptcy and Automatic Stay. Supra noted that it had filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy

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Code, in the United States Bankruptcy Court for Southern District of Florida, Case No. 02-41250-BKC-RAM. Supra also noted that, pursuant to 11 U.S.C. 362, the instant docket had been stayed until further notice.

On October 28, 2002, BellSouth requested that we indefinitely defer consideration of this docket, and on November 12, 2002, BellSouth filed a letter withdrawing its Petition for Implementation of BellSouth's Emergency Service Continuity Tariff and Emergency Rule Waiver, without prejudice.

#### DISCUSSION

The law is clear that the plaintiff'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). Therefore, we acknowledge BellSouth's withdrawal of its Petition for Implementation of BellSouth's Emergency Service Continuity Tariff and Emergency Rule Waiver, without , and find that the voluntary dismissal renders any and all outstanding motions moot. There being no other matters for consideration, this Docket shall be closed.

Based on the foregoing,

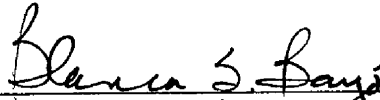
ORDERED that BellSouth's withdrawal of its Petition for Implementation of BellSouth's Emergency Service Continuity Tariff and Emergency Rule Waiver, without prejudice, is hereby acknowledged. It is further

ORDERED that the voluntary dismissal renders any and all outstanding motions moot. It is further

ORDERED that this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 8th Day  
of January, 2003.



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

( S E A L )

WDK

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

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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.