



Public Service Commission

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DATE: 09/04/03

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (L. FORDHAM) *LF* *AK*
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BARRETT) *meB* *RHT*

RE: DOCKET NO. 020738-TP - PETITION BY AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC FOR SUSPENSION AND CANCELLATION OF BELL SOUTH TELECOMMUNICATIONS, INC.'S SWITCHED ACCESS CONTRACT TARIFF NO. FL2002-01 FOR ALLEGED VIOLATIONS OF THE TELECOMMUNICATIONS ACT OF 1996, RULES OF THE FEDERAL COMMUNICATIONS COMMISSION, AND CHAPTER 364, FLORIDA STATUTES.

AGENDA: 9/14/03 *(LF)* ~~09/30/03~~ REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\020738.RCM

CASE BACKGROUND

On July 16, 2002, AT&T Communications of the Southern States, LLC (AT&T) filed its Petition in this matter and this Docket was opened. BellSouth Telecommunications, Inc. (BellSouth) filed its Answer on August 12, 2002, and on September 13, 2002, with leave of this Commission, AT&T filed its Amended Petition. On October 3, 2002, BellSouth filed its Answer to the Amended Petition and Partial Motion to Strike. On January 6, 2003, BellSouth's Partial Motion to Strike was granted and the matter was set for hearing.

On March 11, 2003, the parties filed a Joint Motion for Continuance, and stated that settlement negotiations were under way. The Joint Motion for Continuance was granted on March 14,

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2003, by Order No. PSC-03-0357-PCO-TP. On August 20, 2003, AT&T filed its Notice of Voluntary Dismissal of its Petition and Amended Petition.

The purpose of this recommendation is to acknowledge AT&T's Notice of Voluntary Dismissal of its Petition and its Amended Petition filed in this Docket.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge AT&T's Notice of Voluntary Dismissal of its Petition and its Amended Petition filed in this Docket?

RECOMMENDATION: Yes. The Commission should acknowledge AT&T's Notice of Voluntary Dismissal of its Petition and its Amended Petition filed in this Docket. (L. FORDHAM, BARRETT)

STAFF ANALYSIS: AT&T represents in its Notice of Voluntary Dismissal that the parties have achieved a mutually agreeable resolution of the dispute which formed the basis of the Petition initiating this Docket. Accordingly, there is nothing further in the Docket for this Commission to consider.

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, staff recommends that the Commission acknowledge AT&T's Notice of Voluntary Dismissal of its Petition and its Amended Petition filed in this Docket, and find that the voluntary dismissal renders any and all outstanding motions moot. Additionally, all confidential materials filed in this Docket should be returned to the filing party.

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ISSUE 2: Should this Docket be closed?

RECOMMENDATION: Yes. There is nothing further in this Docket for this Commission to consider and the Docket should be closed.
(L. FORDHAM)

STAFF ANALYSIS: There is nothing further in this Docket for this Commission to consider. Therefore, the Docket should be closed.