



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: JANUARY 8, 2004
TO: DIRECTOR, DIVISION OF THE COMMISSION ADMINISTRATIVE SERVICES (BAYO)
FROM: OFFICE OF THE GENERAL COUNSEL (FORDHAM) c.f.f. DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS)
RE: DOCKET NO. 030200-TP - EMERGENCY PETITION OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC D/B/A AT&T D/B/A LUCKY DOG PHONE CO. D/B/A ACC BUSINESS D/B/A SMARTALK D/B/A UNISPEAKSM SERVICE D/B/A AT&T FOR CEASE AND DESIST ORDER AND OTHER SANCTIONS AGAINST SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.
AGENDA: 01/20/04 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE
CRITICAL DATES: NONE
SPECIAL INSTRUCTIONS: NONE
FILE NAME AND LOCATION: S:\PSC\GCL\WP\030200.RCM

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CASE BACKGROUND

On February 24, 2003, AT&T Communications of the Southern States, LLC d/b/a AT&T d/b/a Lucky Dog Phone Co. d/b/a ACC Business d/b/a SmarTalk d/b/a Unispeaksm Service d/b/a AT&T (collectively, AT&T), filed its Emergency Petition Requesting a Cease and Desist Order and Other Sanctions Against Supra Telecommunications and Information Systems, Inc. (Supra). On March 17, 2003, Supra filed its Motion to Dismiss AT&T's Emergency Petition, and on March 24, 2003, AT&T filed its Response to Supra's Motion to Dismiss. On May 6, 2003, Order No. PSC-03-0578-FOF-TP was issued, denying Supra's Motion to Dismiss and setting the matter for hearing. By Order No. PSC-03-0635-PCO-TP, issued May 23, 2003, the hearing and prehearing dates as well as other key activities dates were established for this proceeding. On June 11, 2003, AT&T filed its Motion for

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Extension of Time to File Testimony. That Motion was granted by Order No. PSC-03-0708-PCO-TP, issued on June 13, 2003. On June 18, 2003, AT&T filed its Motion for Suspension of Procedural Schedule, representing that Supra agreed with and joined in the Motion. That Motion was granted by Order No. PSC-03-0764-PCO-TP, entered June 25, 2003. On January 2, 2004, AT&T filed its Notice of Voluntary Dismissal. This recommendation address AT&T's Notice of Voluntary Dismissal.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge AT&T's Notice of Voluntary Dismissal?

RECOMMENDATION: Yes, the Commission should acknowledge AT&T's Notice of Voluntary Dismissal. **(FORDHAM)**

STAFF ANALYSIS: 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 Emergency Petition. Since no further action is required, all confidential materials filed in this docket should be returned to the filing party. Further, any pending motions and responses are rendered moot.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission approves staff's recommendation in Issue 1, this docket should be closed. **(FORDHAM)**

STAFF ANALYSIS: Should the Commission approve staff's recommendation in Issue 1, there is nothing further in this docket for this Commission to consider. Therefore, this docket should be closed.