

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by BellSouth Telecommunications, Inc. for investigation of wireless carriers' request for BellSouth to provide telecommunications service outside BellSouth's exchange.

DOCKET NO. 020868-TL  
ORDER NO. PSC-09-0149-FOF-TL  
ISSUED: March 11, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman  
LISA POLAK EDGAR  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

ORDER ACKNOWLEDGING AT&T'S NOTICE  
OF WITHDRAWAL OF PETITION FOR INVESTIGATION  
AND ESTABLISHMENT OF GENERIC PROCEEDING

BY THE COMMISSION:

**I. Case Background**

On August 6, 2002, Bellsouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T") filed a Petition for Investigation and Establishment of Generic Proceeding with the Florida Public Service Commission ("Commission") in which it asked this Commission to establish a generic proceeding to determine whether the provision of telecommunications service by AT&T to wireless carriers, when said service is not within an AT&T exchange, violates AT&T's General Subscriber Service Tariff ("GSST") for the State of Florida.

On August 22, 2002, Nextel Communications, Inc. ("Nextel") filed a Petition to Intervene, Request for Oral Argument and a Motion to Dismiss, or in the alternative, Hold in Abeyance.

On August 26, 2002, Sprint Corporation, on behalf of its wireless division, Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint") also filed a Petition to Intervene, Request for Oral Argument and a Motion to Dismiss.

On August 29, 2002, AT&T filed its response to Nextel's Motion to Dismiss. On September 6, 2002, AT&T filed its response to Sprint's Motion to Dismiss.

We granted Nextel and Sprint's Requests and then heard the parties' oral arguments at the October 15, 2002 Agenda Conference. By Order No. PSC-02-1455-PCO-TL, issued on October 22, 2002, we ordered that this docket be held in abeyance. We reserved adjudication of Nextel and Sprint's Motions to Dismiss for a later date. Although this docket remained in

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abeyance since October 22, 2002, our staff periodically contacted the parties to assess the status of this matter. When staff made these contacts, the parties asked that the abeyance remain in place pending proceedings at the federal level that they were monitoring.

On January 14, 2009, AT&T filed a Notice of Withdrawal of Petition for Investigation and Establishment of Generic Proceeding ("Notice"). AT&T advised that the withdrawal was without prejudice.

## II. Analysis

The law is clear that a plaintiff's right to take a voluntary withdrawal is absolute. Fears v. Lunsford, 314 So.2d 578, 579 (Fla. 1975). Once a timely voluntary withdrawal is taken, the trial court loses its jurisdiction to act on a matter. Randle Eastern Ambulance Services, Inc. v. Vasta, 360 So.2d 68, 69 (Fla. 1978).

## III. Decision

Having been timely filed, we hereby acknowledge AT&T's Notice of Withdrawal of Petition for Investigation and Establishment of Generic Proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that AT&T's Notice of Withdrawal of Petition for Investigation and Establishment of Generic Proceeding is acknowledged. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 11th day of March, 2009.

ANN COLE  
Commission Clerk

By: Dorothy E. Menasco  
Dorothy E. Menasco  
Chief Deputy Commission Clerk

(SEAL)

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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.