



# Public Service Commission

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RECORDS AND REPORTING

**DATE:** APRIL 22, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING

**FROM:** DIVISION OF APPEALS (HELTON) *WAT* *DES*  
DIVISION OF COMMUNICATIONS (SIMMONS) *SAS* *D*

**RE:** DOCKET NO. 990132-TP - COMPLAINT OF AGI PUBLISHING, INC. D/B/A VALLEY YELLOW PAGES AGAINST GTE FLORIDA INCORPORATED FOR VIOLATION OF SECTIONS 364.08 AND 364.10, FLORIDA STATUTES, AND REQUEST FOR RELIEF.

**AGENDA:** 5/4/99 - REGULAR AGENDA - VOLUNTARY DISMISSAL - PARTIES MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\APP\WP\990132.RCM

**CASE BACKGROUND**

On February 5, 1999, AGI Publishing, Inc. d/b/a Valley Yellow Pages (Valley Yellow Pages) filed a complaint with this Commission against GTE Florida Incorporated/GTE Telephone Operating Companies (GTEFL) for alleged violation of Sections 364.08 and 364.10, Florida Statutes. GTEFL provides billing and collection services to Valley Yellow Pages for yellow pages advertising pursuant to a Billing Services Agreement. On February 9, 1999, Valley Yellow Pages also filed a petition for declaratory statement regarding the applicability of Sections 364.08 and 364.10, Florida Statutes, based on the same facts alleged in Valley Yellow Pages earlier complaint. GTEFL moved to dismiss the complaint and also sought to have the Commission deny the petition for declaratory statement. At its March 30, 1999, agenda conference, the Commission voted to dismiss Valley Yellow Pages' complaint. Valley Yellow Pages filed a Notice of Voluntary Dismissal Without Prejudice of its petition for declaratory statement on April 14, 1999.

DOCUMENT NUMBER-DATE

**05171 APR 22 99**

FPSC-RECORDS/REPORTING

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission acknowledge Valley Yellow Pages' voluntary dismissal of its petition for declaratory statement?

**RECOMMENDATION:** Yes, Valley Yellow Pages' voluntary dismissal divests the Commission of jurisdiction over this matter. The only further action the Commission can take is to acknowledge the dismissal and close the docket.

**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 and cannot revive the original action for any reason. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So. 2d 68, 69 (Fla. 1978).

Staff recommends that the Commission find Valley Yellow Pages' voluntary dismissal of its petition for declaratory statement divests the Commission of further jurisdiction over this matter. The only additional action the Commission can take is to acknowledge Valley Yellow Pages' notice of voluntary dismissal without prejudice and close the docket.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes.

**STAFF ANALYSIS:** If the Commission approves staff's recommendation in Issue 1, this docket should be closed.