

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 990132-TP  
ORDER NO. PSC-99-0936-FOF-TP  
ISSUED: May 11, 1999

The following Commissioners participated in the disposition  
of this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JULIA L. JOHNSON  
E. LEON JACOBS, JR.

ORDER ACKNOWLEDGING VOLUNTARY WITHDRAWAL OF  
PETITION FOR DECLARATORY STATEMENT

BT THE COMMISSION:

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. Four days later, 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. After we voted to dismiss the complaint, Valley Yellow Pages filed a Notice of Voluntary Dismissal Without Prejudice of its petition for declaratory statement on April 14, 1999.

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

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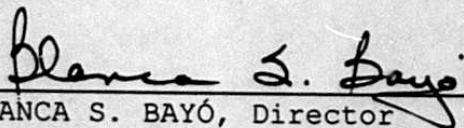
jurisdiction to act and cannot revive the original action for any reason. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So. 2d 68, 69 (Fla. 1978).

Accordingly, we find that Valley Yellow Pages' voluntary dismissal of its petition for declaratory statement divests us of further jurisdiction over this matter. We therefore acknowledge Valley Yellow Pages' notice of voluntary dismissal without prejudice and close this docket.

It is therefore

ORDERED by the Florida Public Service Commission that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 11th day of May, 1999.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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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.



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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 Records and Reporting, 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 Director, Division of Records and reporting 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.