



Public Service Commission

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PSC

DATE: AUGUST 17, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYB)

FROM: DIVISION OF APPEALS (HELTON) *Walt DES*
DIVISION OF COMPETITIVE SERVICES (MOSES, SIMMONS) *SAS*
DIVISION OF REGULATORY OVERSIGHT (GILCHRIST) *JY PD*

RE: DOCKET NO. 000816-TP - REQUEST FOR DECLARATORY STATEMENT THAT PLANNED SERVICE TO PROVIDE NATIONAL DIRECTORY ASSISTANCE VIA AN 800 NUMBER TO RESIDENTIAL AND BUSINESS CUSTOMERS IN FLORIDA FOR A CHARGE DOES NOT FALL UNDER COMMISSION'S REGULATORY PROVISIONS, BY EDATA.COM, INC.

AGENDA: 8/29/00 - REGULAR AGENDA - DECISION ON DECLARATORY STATEMENT - PARTIES MAY PARTICIPATE AT THE COMMISSION'S DISCRETION

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\APP\WP\000816.RCM

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge eData.com's voluntary dismissal of its request for declaratory statement?

RECOMMENDATION: Yes, eData.com's 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: eData.com sought a declaratory statement from the Commission, which it later voluntarily withdrew on August 14, 2000. The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lunsford, 314 So. 2d 578, 579

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(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 eData.com's 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 eData.com's 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.