



Public Service Commission

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RECORDS AND REPORTING

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DATE: OCTOBER 26, 2000

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

FROM: DIVISION OF APPEALS (HELTON) *Walt*
DIVISION OF COMPETITIVE SERVICES (BUYS, MOSES, SIMMONS) *SAS*
DIVISION OF REGULATORY OVERSIGHT (MCCOY) *jm PA and*

RE: DOCKET NO. 001261-TP - PETITION OF GEMINI NETWORKS FL, INC. FOR DECLARATORY STATEMENT REGARDING FLORIDA PUBLIC SERVICE COMMISSION JURISDICTION UNDER SECTIONS 364.02(12) AND 364.337, F.S.

AGENDA: 11/7/00 - 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\001261WD.RCM

CASE BACKGROUND

ISSUE 1: Should the Commission acknowledge Gemini Networks FL, Inc.'s voluntary withdrawal of its request for declaratory statement?

RECOMMENDATION: Yes, Gemini Networks FL, Inc.'s voluntary withdrawal divests the Commission of jurisdiction over this matter. The only further action the Commission can take is to acknowledge the withdrawal and close the docket. (Helton)

STAFF ANALYSIS: Gemini Networks FL, Inc. (Gemini) sought a declaratory statement from the Commission, which it later voluntarily withdrew on October 23, 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 (Fla. 1975). It is also

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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 Gemini's voluntary withdrawal 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 Gemini's voluntary withdrawal without prejudice and close the docket.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. (Helton)

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