



Public Service Commission

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COMMISSION
CLERK

DEC-5 PM 12:19

FFSC

DATE: DECEMBER 5, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (KNIGHT) *WOK PK SJS* *JK*
DIVISION OF COMPETITIVE MARKETS AND ENFORCEMENT (SIMMONS, PRUITT)

RE: DOCKET NO. 021062-TL - PETITION FOR DETERMINATION AS TO WHETHER SUFFICIENT JUSTIFICATION EXISTS TO IMPLEMENT EMERGENCY SERVICE CONTINUITY PLAN TARIFF AND, IF SO, FOR EMERGENCY WAIVER OF RULE 25-4.118, F.A.C., BY BELLSOUTH TELECOMMUNICATIONS, INC.

AGENDA: 12/17/2002 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\021062.RCM

CASE BACKGROUND

On October 21, 2002, the Petition by BellSouth Telecommunications, Inc. for Implementation of BellSouth's Emergency Service Continuity Tariff and Emergency Rule Waiver was filed with the Commission. BellSouth asserts that its Emergency Service Continuity Plan (ESCPT) (Section A5.8 of BellSouth's General Subscriber Service Tariff), as filed on August 6, 2002, is intended to address the situation where BellSouth has chosen to discontinue service to an ALEC that has effectively abandoned its end user customers or when some other sufficient emergency exists. In instances where BellSouth is the underlying facilities provider, BellSouth believes the ESCPT provides a mechanism for the orderly transition of service from the current service provider to a new provider chosen by the subscriber.

DOCUMENT NUMBER-DATE

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FFSC-COMMISSION CLERK

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On October 23, 2002, Supra Telecommunications and Information Systems filed a Notice of Voluntary Bankruptcy and Automatic Stay. Supra noted that it had filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code, in the United States Bankruptcy Court for Southern District of Florida, Case No. 02-41250-BKC-RAM. Supra stated that, pursuant to 11 U.S.C. 362, this docket had been stayed until further notice.

On October 28, BellSouth requested that this Commission indefinitely defer consideration of this docket, and on November 12, 2002, BellSouth filed a letter withdrawing its Petition for Implementation of BellSouth's Emergency Service Continuity Tariff and Emergency Rule Waiver, without Prejudice.

This is staff's recommendation on whether to acknowledge BellSouth's letter withdrawing its Petition for Implementation of BellSouth's Emergency Service Continuity Tariff and Emergency Rule Waiver, without Prejudice, and on the closing of this docket.

DISCUSSION OF THE ISSUES

ISSUE 1: Should the Commission acknowledge BellSouth's withdrawal of its Petition for Implementation of BellSouth's Emergency Service Continuity Tariff and Emergency Rule Waiver, without Prejudice, and close this Docket?

RECOMMENDATION: Yes. The Commission should acknowledge BellSouth's withdrawal of its Petition for Implementation of BellSouth's Emergency Service Continuity Tariff and Emergency Rule Waiver, without Prejudice, find that the voluntary dismissal renders any and all outstanding motions moot, and close this docket. (**KNIGHT, SIMMONS**)

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. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68, 69 (Fla. 1978). Therefore, staff recommends that the Commission acknowledge BellSouth's withdrawal of its Petition for Implementation of BellSouth's Emergency Service Continuity Tariff and Emergency Rule Waiver, without Prejudice, and find that the voluntary dismissal renders any and all outstanding motions moot. Staff also recommends that the Docket should be closed.