



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: MARCH 20, 2003

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

FROM: OFFICE OF THE GENERAL COUNSEL (DODSON) *DD*
DIVISION OF COMPETITIVE SERVICES (WATTS) *WATTS*
DIVISION OF CONSUMER AFFAIRS (SMITH) *SMITH*

RE: DOCKET NO. 020976-TL - COMPLAINT OF PHILLIP R. BROWN
AGAINST BELL SOUTH TELECOMMUNICATIONS, INC. FOR BILLING
DISPUTE INVOLVING ALLEGED IMPROPER INSTALLATION AND STATIC
ON LINE.

AGENDA: 04/01/03 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\020976.RCM

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CASE BACKGROUND

On February 22, 2002, Phillip R. Brown filed a complaint against BellSouth Telecommunications, Inc. (BellSouth). This complaint was logged as Consumer Activity Tracking System Request No. 438467T. Mr. Brown alleged that BellSouth performed repairs without his authorization for which he was billed. Mr. Brown also requested his account be credited for the months of service when his line was unusable for 90 percent or more of the time due to static.

On November 12, 2002, Proposed Agency Action Order No. PSC-02-1543-PAA-TL was issued denying Mr. Brown's complaint. Phillip R. Brown filed a protest to Proposed Agency Action Order No. PSC-02-1543-PAA-TL on December 13, 2002. On January 6, 2003, an Order Establishing Procedure, Order No. PSC-03-0039-PCO-TL, was issued

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and the matter was set for hearing. On February 20, 2003, Mr. Brown filed a Notice of Dismissal of Complaint No. 438467T.

DISCUSSION OF THE ISSUES

ISSUE 1: Should the Commission acknowledge Phillip R. Brown's Dismissal of his Petition and close this docket?

RECOMMENDATION: Yes. Mr. Brown's voluntary dismissal divests the Commission of jurisdiction over this matter. The only further action the Commission should take is to acknowledge the dismissal. Since no further action remains for the Commission to address, this docket should be closed. (Dodson, Watts, Smith)

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). The only additional action the Commission should take is to acknowledge Mr. Brown's dismissal and close the docket. Since no other action remains for the Commission to address, this docket should be closed upon issuance of the Order from this recommendation.