

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION
CLERK

DATE: APRIL 3, 2002

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

FROM: OFFICE OF THE GENERAL COUNSEL (DODSON, KNIGHT) *pld*
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BROWN) *WOK*

RE: DOCKET NO. 020099-TP - COMPLAINT OF ALEC, INC. D/B/A VOLARIS TELECOM, INC. FOR ENFORCEMENT OF INTERCONNECTION AGREEMENT WITH SPRINT-FLORIDA, INCORPORATED AND REQUEST FOR RELIEF.

AGENDA: APRIL 15, 2003 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\020099.RCM

CASE BACKGROUND

On February 5, 2002, ALEC, Inc. f/k/a Metrolink (ALEC) d/b/a Volaris Telecom, Inc., a subsidiary of Duro Communications Corp., filed a complaint against Sprint-Florida, Inc. d/b/a/ Sprint (Sprint) requesting relief and enforcement of the current Interconnection Agreement between ALEC and Sprint. The parties' agreement at issue here was submitted to this Commission in Docket No. 010877-TP and went into effect by operation of law on September 20, 2001. The dispute involved the obligations under which the companies transport traffic to points of interconnection. A hearing was held on August 7, 2002. Post-hearing briefs were submitted in September. In January, the parties requested time to negotiate a settlement. On March 12, 2003 ALEC filed a notice of dismissal of complaint.

DOCUMENT NUMBER-DATE

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DISCUSSION OF THE ISSUES

ISSUE 1: Should the Commission acknowledge ALEC, Inc. f/k/a Metrolink d/b/a Volaris Telecom, Inc.'s (ALEC) Dismissal of Complaint and close this docket?

RECOMMENDATION: Yes. ALEC'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. (Brown, Dodson, Knight)

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 ALEC'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.