



# 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:** OCTOBER 22, 2003

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

**FROM:** OFFICE OF THE GENERAL COUNSEL (F. BANKS) *FRB*  
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (A. MARSH) *AM*

**RE:** DOCKET NO. 030457-TP - COMPLAINT OF NEWSOUTH  
COMMUNICATIONS CORP. FOR ENFORCEMENT OF INTERCONNECTION  
AGREEMENT WITH SPRINT-FLORIDA, INCORPORATED, AND REQUEST  
FOR RELIEF

**AGENDA:** 11/03/03 - REGULAR AGENDA - NOTICE OF VOLUNTARY WITHDRAWAL  
OF COMPLAINT - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\030457.RCM

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### CASE BACKGROUND

On May 23, 2003, NewSouth Communications Corp. (NewSouth) filed a Complaint for enforcement of an Interconnection agreement with Sprint-Florida, Inc. (Sprint). On June 17, 2003, Sprint filed an Answer to NewSouth's Complaint. The matter was set for an administrative hearing.

On September 16, 2003, the parties filed a Joint Motion for Extension of Time to file their direct testimony. The basis cited for the motion was that on August 28, 2003, the parties engaged in mediation in the presence of a Commission mediator and reached a conceptual settlement of the issues disputed in this docket. The parties stated that they anticipated that the agreement would be executed and the obligations required of each party under the agreement would be completed in the near future, at which time NewSouth would dismiss its complaint that is the subject of this

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docket. By Order No. PSC-03-1024-PCO-TP, issued September 17, 2003, the motion was granted.

On October 1, 2003, NewSouth filed its Motion of Voluntary Dismissal pursuant to Rule 1.420(1), Florida Rules of Civil Procedures.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission acknowledge NewSouth's Notice of Voluntary Dismissal of its Petition?

**RECOMMENDATION:** Yes. The Commission should acknowledge NewSouth's Notice of Voluntary Dismissal of its Petition. In addition, all confidential materials filed in this Docket should be returned to the filing party. **(F. BANKS, A. MARSH)**

**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 NewSouth's Notice of Voluntary Dismissal of its Petition. Since no further action is needed, all confidential materials filed in this Docket should be returned to the filing party.

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**ISSUE 2:** Should this Docket be closed?

**RECOMMENDATION:** Yes. There is nothing further in this Docket for this Commission to consider, and the Docket should be closed.

**(F. BANKS)**

**STAFF ANALYSIS:** There is nothing further in this Docket for this Commission to consider. Therefore, the Docket should be closed.