

State of Florida



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: November 7, 2007

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Teitzman)
Division of Competitive Markets & Enforcement (King, Lee)

RE: Docket No. 070552-TP – Petition and complaint for expedited proceeding or, alternatively, petition and complaint or petition for declaratory statement, by MetroPCS Florida, LLC, requiring BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast; TDS Telecom d/b/a TDS Telecom/Quincy Telephone; Windstream Florida, Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc. d/b/a GT Com; Smart City Telecommunications, LLC d/b/a Smart City Telecom; ITS Telecommunications Systems, Inc.; and Frontier Communications of the South, LLC, to submit agreements for transit services provided by AT&T Florida for approval.

AGENDA: 11/20/07 – Regular Agenda – Notice of Voluntary Dismissal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Carter

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\070552.RCM.DOC

Case Background

On August 1, 2007, MetroPCS Florida, LLC (MetroPCS) filed its Petition and Complaint for Expedited Proceeding or, alternatively, Petition and Complaint or Petition for Declaratory Statement, Requiring BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T

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Southeast (AT&T); TDS Telecom d/b/a TDS Telecom/Quincy Telephone (TDS); Windstream Florida, Inc. (WindStream); Northeast Florida Telephone Company d/b/a NEFCOM (NEFCOM); GTC, Inc. d/b/a GT Com (GT Com); Smart City Telecommunications, LLC d/b/a Smart City Telecom (Smart City); ITS Telecommunications Systems, Inc. (ITS); and Frontier Communications of the South, LLC (Frontier), to submit agreements for transit services provided by AT&T Florida for approval. On August 21, 2007, AT&T filed its Motion to Dismiss. Also on August 21, 2007, MetroPCS filed a voluntary dismissal, without prejudice of its complaint against TDS, NEFCOM, and GT Com. On August 23, 2007, Windstream, Smart City, and ITS filed their Joint Motion to Dismiss.

On October 25, 2007, MetroPCS filed its Notice of Voluntary Dismissal, with prejudice.

Discussion of Issues

Issue 1: Should the Commission acknowledge MetroPCS's Notice of Voluntary Dismissal, with prejudice?

Recommendation: Yes. The Commission should acknowledge MetroPCS's Notice of Voluntary Dismissal, with prejudice. (TEITZMAN)

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). In its Motion, MetroPCS states that this dismissal is by agreement of the parties and any pending motions would thereby be mooted. Accordingly, staff recommends that the Commission acknowledge MetroPCS's Notice of Voluntary Dismissal, with prejudice.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, there are no further matters for the Commission to adjudicate in this docket and, therefore, it should be closed. (TEITZMAN)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, there are no further matters for the Commission to adjudicate in this docket and, therefore, it should be closed.