

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: January 29, 2009

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Teitzman)
Division of Regulatory Compliance (Barrett)

RE: Docket No. 020868-TL – Petition by BellSouth Telecommunications, Inc. for investigation of wireless carriers' request for BellSouth to provide telecommunications service outside BellSouth's exchange.

AGENDA: 02/10/09 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCP\WP\020868.RCM.DOC

Case Background

On August 6, 2002, Bellsouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T”) filed a Petition for Investigation and Establishment of Generic Proceeding with the Florida Public Service Commission (“Commission”) in which it asked the Commission to establish a generic proceeding to determine whether the provision of telecommunications service by AT&T to wireless carriers, when said service is not within an AT&T exchange, violates AT&T’s General Subscriber Service Tariff (“GSST”) for the State of Florida.

On August 22, 2002, Nextel Communications, Inc. (“Nextel”) filed a Petition to Intervene, Request for Oral Argument and a Motion to Dismiss, or in the alternative, Hold in Abeyance.

On August 26, 2002, Sprint Corporation, on behalf of its wireless division, Sprint Spectrum L.P., d/b/a Sprint PCS ("Sprint") also filed a Petition to Intervene, Request for Oral Argument and a Motion to Dismiss.

On August 29, 2002, AT&T filed its response to Nextel's Motion to Dismiss. On September 6, 2002, AT&T filed its response to Sprint's Motion to Dismiss.

The Commission granted Nextel and Sprint's Requests and then heard the parties' oral arguments at the October 15, 2002 Agenda Conference. By Order No. PSC-02-1455-PCO-TL, issued on October 22, 2002, the Commission ordered that this docket be held in abeyance. The Commission reserved adjudication of Nextel and Sprint's Motions to Dismiss for a later date. Although, this docket has remained in abeyance since October 22, 2002, staff has periodically contacted the parties to assess the status of this matter. When staff made these contacts, the parties asked that the abeyance remain in place pending proceedings at the federal level that they were monitoring.

On January 14, 2009, AT&T filed a Notice of Withdrawal of Petition for Investigation and Establishment of Generic Proceeding ("Notice"). AT&T advised this Commission that it is withdrawing its Petition without prejudice.

Discussion of Issues

Issue 1: Should the Commission acknowledge AT&T's Notice?

Recommendation: Yes. The Commission should acknowledge AT&T's Notice. **(TEITZMAN)**

Staff Analysis: The law is clear that a plaintiff's right to take a voluntary withdrawal is absolute. Fears v. Lunsford, 314 So.2d 578, 579 (Fla. 1975). Once a timely voluntary withdrawal is taken, the trial court loses its jurisdiction to act on a matter. Randle Eastern Ambulance Services, Inc. v. Vasta, 360 So.2d 68, 69 (Fla. 1978). Having been timely filed, staff recommends that the Commission acknowledge AT&T's Notice.

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Issue 2: Should this docket be closed?

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