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September 25, 1997

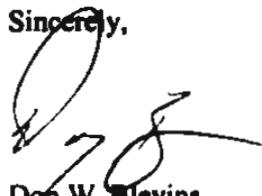
Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32301

Re: ~~Docket 970002~~ TI
Petition by the Attorney General and the Citizens
of the State of Florida Against Intercontinental Group, Inc.

Dear Mrs. Bayó:

I enclose for filing in the referenced docket an original and fifteen copies of Intercontinental Group, Inc.'s Objections to the Attorney General and the Citizens' First Set of Requests For Production Of Documents. I also enclose an additional copy, which I request that you file-stamp and return to me in the enclosed, stamped envelope.

Sincerely,



Don W. Blevins

ACK _____
AFA _____
APP 1 _____
CAF _____

CMU Enclosures

CTD _____
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RECEIVED & FILED

FPSC-BUREAU OF RECORDS 3000 K STREET, N.W. • SUITE 300
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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Joint Petition of Robert A. Butterworth,)
Attorney General, and the Citizens of the)
State of Florida, by and through the Office)
of Public Counsel, for initiation of formal)
proceedings pursuant to Section 120.57(1),)
Florida Statutes, to investigate the practice)
of "slamming," i.e. the unauthorized change)
of a customer's presubscribed carrier, and to)
determine the appropriate remedial measures)

Docket 970882-TI

Filed: September 25, 1997

**INTERCONTINENTAL GROUP'S OBJECTIONS TO FIRST
SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
BY THE ATTORNEY GENERAL AND THE CITIZENS**

Pursuant to the Commission's September 12, 1997 Order Granting Petition by the Attorney General and Office of Public Counsel and Establishing Procedure, No. PSC-97-1071-PCO-TI (the "Initiating Order"), Intercontinental Group ("Intercontinental"), through its undersigned counsel, submits its objections to the First Set of Requests for Production of Documents by the Attorney General and the Citizens (the "Requests"). In submitting these objections, Intercontinental in no way seeks to intervene in this proceeding, but to the contrary expressly objects to any attempt to impose intervention and related obligations on Intercontinental without Intercontinental's consent.

GENERAL OBJECTIONS

1. Intercontinental objects to the Requests on the ground that Intercontinental is not a party to this proceeding. When the Requests were filed on September 11, 1997, the Commission had not yet ruled on the July 15, 1997 Joint Petition for the Initiation of Formal Proceedings Pursuant to Section 120.57, Florida Statutes, to Investigate the Practice of Slamming and to Determine the Appropriate Remedial Measures (the "Joint Petition"). The Joint Petition states

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that it is "essential that the Commission join as necessary parties all affected telecommunications companies, including but not limited to, those involved in previous slamming complaints." Joint Petition at 7, ¶ 14. Since the filing of the Requests, the Commission issued its Initiating Order. The Initiating Order grants the Petition only in part, and *does not* join as parties all affected telephone companies.¹

The Requests appear to have been filed in anticipation of a Commission order joining Intercontinental and other telephone companies as parties to this Docket. The authority for discovery cited in the Requests (Section 350.0611(a), *Fla. Stat.* (1995), Rules 25-22.34 and 25.22.35, F.A.C. and Rule 1.350, F.R.C.P.) applies only to discovery against parties. Specifically, Rule 25-22.34, F.A.C., provides that parties may obtain discovery "through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure." Similarly, Rule 25-22.35(3), F.A.C., provides: "Generally, the Florida Rules of

¹ Indeed, in light of the numerous other state proceedings that have addressed the issue of slamming without imposing the broad participation and discovery requirements contemplated by the Petition, it hardly seems the case that such an imposition is "essential" in this docket. See *Proposed Amendment of Chapter 515-12-1 Telephone Service Rules to Add a New Section 515-12-1-32 Entitled Rules for Changing a Telecommunication Customers Preferred Local/Long Distance Carrier*, Docket No. 6872-U, Georgia Public Service Commission, (Issued December 5, 1996); *In re: Proposed Generic Regulations for Interexchange Carriers, Including Slamming and Bonding Requirements for Debit Card Providers*, Docket No. U-22219, Louisiana Public Service Commission, (Issued December 2, 1996); *In the Matter of Rules for Changing a Consumer's Communications Service, Order Instituting Rulemaking and Requesting Comments*, Docket No. P-100, Sub 139, North Carolina Utilities Commission, (Issued June 10, 1997); *In the Matter of a Rulemaking by the Oklahoma Corporation Commission Amending and Establishing Certain Rules Governing resellers Interexchange Telecommunications Services, OAC 156:56.*, Notice Soliciting Comments, Cause No. RM 970000015, Oklahoma Corporation Commission, (Issued March 5, 1997); *Proposed Permanent Rule 4.700 re: "Slamming."* Notice Soliciting Comments, Vermont Public Service Board, (Issued April 1, 1997).

Civil Procedure shall govern in proceedings before the Commission under this part” Rule 1.350, F.R.C.P., provides for discovery only against *parties* to a proceeding. Thus: “Any party may request any other *party* (1) to produce and permit the party making the request . . . to inspect and copy any designated documents” The Requests cite no rule --because there is none -- authorizing a party to an administrative proceeding to obtain discovery from a non-party.²

The Attorney General has participated in numerous proceedings involving broad discovery in connection with an investigation into alleged slamming activities.³ The burdens

² Commission Rule 25-22.045 provides for the issuance of subpoenas by the Hearing Officer for discovery against third parties. That rule permits parties to apply in writing for the issuance of subpoenas. Rule 25-22.045, F.A.C. The Attorney General did not follow those procedures in this instance, and indeed its Requests are too broad and burdensome to warrant issuance of such a subpoena. See *Naples Community Hosp., Inc. v. State Agency For Health Care Admin.*, 687 So.2d 62 (Fla. Dist Ct. App. 1997) (party seeking discovery failed to explain adequately how proceeding at bar justified delving into financial aspects of the eighteen non-party corporations); see also *Jerry's South, Inc. v. Morran*, 582 So.2d 803, 804 (Fla. Dist. Ct. App. 1991) (granting a protective order against discovery against non-party where information sought was overbroad); *Dade County Med. Assoc. v. Hllis*, 372 So.2d 117, 121 (Fla. Dist. Ct. App. 1979) (non-party medical association not required to comply with a discovery order in which the interests of maintaining the confidentiality of records greatly outweighed the grounds for discovery).

³ See *In Re: Initiation of Show Cause Proceeding against LDM Systems, Inc. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection*, Docket No. 960841-TI, Order No. PSC-96-1297-FOF-TI, (Issued Oct. 21, 1996); *In Re: Initiation of Show Cause Proceedings against Phone Calls, Inc. for violations of Rules 25-4.043, F.A.C., Response to Commission Staff Inquiries, 25-4.118, F.A.C., Interexchange Carrier Selection, and 25-24.472, F.A.C., Improper Use of a Certificate*, Docket No. 961479-TI, Order No. PSC-97-0124-FOF-TI, (Issued Feb. 4, 1997); *In re: Initiation of Show Cause Proceedings against Combined Companies, Inc. for violation of Rules 25-4.118, Interexchange Carrier Selection, and 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required*, Docket No. 961458, Order No. PSC-97-0179-FOF-TI, (Issued Feb. 18, 1997); *In Re: Initiation of Show Cause Proceeding against Integrated TeleServices, Inc. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection*, Docket No. 970097-TI, Order No. PSC-97-0512-FOF-TI, (Issued May 5, 1997).

associated with discovery in those cases were perhaps appropriate in light of allegations of wrongdoing relating to a specific carrier. Absent such justification, however, it would be highly abusive to impose such obligations on carriers indiscriminately. Thus, as reflected by the absence from the Order of any provision naming Intercontinental as a party, Intercontinental should not be subject to the burdens imposed by these Requests

Because Intercontinental is not subject to party discovery in this proceeding, it objects to the Requests in their entirety.

SPECIFIC OBJECTIONS

Without waiving its general objections, Intercontinental provides the following additional objections to specific document requests.

- 1. Please provide all internal analyses, studies, reports, papers, or other documents performed by Intercontinental or performed at the request of Intercontinental regarding:**
 - a. slamming or unauthorized PIC changes,**
 - b. the level of or amount of slamming incidents that have been identified by Intercontinental,**
 - c. potential changes to rules or practices regarding changing primary interexchange carriers,**
 - d. the effect of slamming on customers,**
 - e. the effect of slamming either on Intercontinental, the local exchange industry, or the interexchange industry, or**
 - f. the effect of slamming on competition.**

Intercontinental objects to Request No. 1 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the

discovery of admissible evidence. Intercontinental further objects to Request No. 1 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

2. Please provide all memos, correspondence, or e-mail in your possession, custody or control, between people at Intercontinental or any affiliate, regarding slamming.

Intercontinental objects to Request No. 2 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Intercontinental further objects to Request No. 2 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

3. Please provide each document in your possession, custody or control showing the name, address and telephone number of every customer that has complained to your company of slamming or unauthorized PIC changes during the past 12 months.

Intercontinental objects to Request No. 3 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Intercontinental further objects to Request No. 3 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

4. Please provide copies of your current training materials and directives to business office or marketing personnel dealing with handling of slamming complaints.

Intercontinental objects to Request No. 4 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the

discovery of admissible evidence. Intercontinental further objects to Request No. 4 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

5. Please provide copies of all letters or other forms currently used to confirm sales to customers.

Intercontinental objects to Request No. 5 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Intercontinental further objects to Request No. 5 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

6. Please provide copies of all company practices regarding the handling of customers who claim to have been subjected to "slamming" or unauthorized PIC changes.

Intercontinental objects to Request No. 6 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Intercontinental further objects to Request No. 6 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

7. Please provide letters, directives, correspondence, and other documents in your possession, custody or control relating to slamming or unauthorized PIC changes, when the customer originally belonged to your company and was slammed by another company.

Intercontinental objects to Request No. 7 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Intercontinental further objects to Request No. 7 to the extent

that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

8. Please provide all letters, directives, correspondence, and other documents in your possession, custody or control relating to slamming or unauthorized PIC changes, when your company has been accused of "slamming" or unauthorized PIC changes.

Intercontinental objects to Request No. 8 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Intercontinental further objects to Request No. 8 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

9. Please provide copies of all forms currently used by Intercontinental to solicit new customers.

Intercontinental objects to Request No. 9 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Intercontinental further objects to Request No. 9 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

10. Please provide copies of all PIC change orders processed by your company since January 1, 1996, when the reason for the change was due to slamming.

Intercontinental objects to Request No. 10 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Intercontinental further objects to Request No. 10 to the extent that it seeks disclosure of information protected by the work product doctrine,

attorney/client privilege, trade secret privilege, or any other applicable privilege.

11. Please provide copies of all company practices regarding the handling of customers who claim to have been subjected to "slamming" or unauthorized PIC change.

Intercontinental objects to Request No. 11 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Intercontinental further objects to Request No. 11 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

12. Please provide each document in your possession, custody or control commenting on or evaluating the policies or practices of the Florida Public Service Commission or its staff regarding slamming.

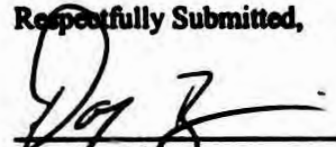
Intercontinental objects to Request No. 12 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Intercontinental further objects to Request No. 12 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

13. Please provide all documents in your possession, custody or control relating to complaints received from the Florida Public Commission or its staff since January 1, 1996, regarding any complaint about slamming.

Intercontinental objects to Request No. 13 on the ground that it is overly broad, unduly burdensome, and seeks disclosure of information that is not relevant nor likely to lead to the discovery of admissible evidence. Intercontinental further objects to Request No. 13 to the extent that it seeks disclosure of information protected by the work product doctrine, attorney/client privilege, trade secret privilege, or any other applicable privilege.

For the foregoing reasons, Intercontinental respectfully objects to the Requests in their entirety.

Respectfully Submitted,



Ky E.B. Kirby
Warren A. Eich

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Washington, D.C. 20007
(202) 424-7500

Counsel for Intercontinental Group

**CERTIFICATE OF SERVICE
DOCKET NO. 970882-TI**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Federal

Express this 25th day of September, 1997 to the following:

**Charles J. Beck
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Office of Public Counsel
c/o The Florida Legislature
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Tallahassee, FL 32399-1400**

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