

ORIGINAL



JACK SHRIVE  
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**STATE OF FLORIDA  
OFFICE OF THE PUBLIC COUNSEL**

c/o The Florida Legislature  
111 West Madison St.  
Room 812  
Tallahassee, Florida 32399-1400  
850-488-9330

September 30, 1997

Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Docket No. ~~87-0000-41~~

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the First Motion to Compel Against BCI by the Attorney General and the Citizens of Florida. A diskette in WordPerfect 6.1 is also submitted.

ACK \_\_\_\_\_ Please indicate the time and date of receipt on the enclosed duplicate of this letter  
AFA \_\_\_\_\_ and return it to our office.

APP 1

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CMC \_\_\_\_\_

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SE 1 Enclosures

WAC \_\_\_\_\_

OTH \_\_\_\_\_

Sincerely,

Charles J. Beck  
Deputy Public Counsel

RECEIVED & FILED  
  
DIVISION OF RECORDS

DOCUMENT NUMBER - DATE  
**10045 SEP 30 6**  
FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICES COMMISSION**

In re: Proposed Rule 25-24.845, )  
 F.A.C., Customer Relations; )  
 Rules Incorporated, and Proposed )  
 Amendments to Rules 25-4.003, )  
 F.A.C., Definitions; 25-4.110, )  
 F.A.C., Customer Billing; 25- )  
 4.118, F.A.C., Interexchange )  
 Carrier Selection; 25-24.490, )  
 F.A.C., Customer Relations; )  
 Rules Incorporated. )

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Docket No. 970882-T1

Filed: September 30, 1997

**FIRST MOTION TO COMPEL AGAINST BCI**  
**BY THE ATTORNEY GENERAL AND THE CITIZENS OF FLORIDA**

Robert A. Butterworth, Attorney General ("Attorney General" ) and the Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the Florida Public Service Commission to issue an order requiring Brittan Communications International, Inc., d/b/a BCI Corp. ("BCI") to produce each of the documents requested in the Citizen's First Set of Requests for Production of Documents to BCI. In support of this motion, the Attorney General and the Citizens submit the following:

1. On September 10, 1997, the Attorney General and the Citizens served our first set of requests for production of documents to BCI. These requests for documents seek documents necessary for the Attorney General and the Citizens to prepare our case. On September 26, 1997, BCI filed its objections to this request for production of documents.

2. BCI makes a general objection against responding to any discovery requests because it is a "non-party." This matter was specifically discussed at the agenda conference when the Commission took up the joint petition by the Attorney General and the Citizens for initiation of formal proceedings pursuant to section 120.57, Florida Statutes. The staff recommended that the Commission's undocketed rule proceeding dealing with slamming be joined with the petition by the Attorney General and the Citizens of Florida. Since this docket is now a rule proceeding, there are no "parties" to the proceeding. At the agenda conference dealing with the joint petition, the Attorney General and the Citizens specifically requested confirmation that all telecommunications companies with a certificate from the Commission could be served with discovery requests in this proceeding. All such companies are potentially affected by a change in rules. The staff confirmed that it agreed with this interpretation, and the Commission questioned staff about this interpretation. No disagreement was expressed by the Commission, staff, or any other party at agenda concerning this matter. Therefore, the Commission has already confirmed that any company with a certificate from the Commission is subject to discovery requests in this docket. Had this not been so, the Attorney General and the Citizens would not have agreed to joining the rule proceeding with our petition for an investigation into slamming. BCI's objection should be denied.

3. BCI also objects to the requests to the extent that the requests seek to impose an obligation on BCI to respond on behalf of subsidiaries, affiliates, or other

persons. Definition number 2 of the request for documents stated that the terms "you" and "your" meant BCI together with its officers, employees, consultants, agents, representatives, attorneys (unless privileged), and any other person or entity acting on behalf of BCI. The document request does not seek to have BCI procure documents from every affiliated company of BCI. Rather, it seeks only those documents from persons or entities acting on behalf of BCI. This is a proper request for documents. Rule 1.350, Florida Rules of Civil Procedure (adopted by Commission rule) allows requests for documents in the possession, custody, or control of the party to whom the request is directed. Persons or entities acting on behalf of BCI are within the "control" of the company. In addition, when two companies "act as one," discovery is permissible. *Medivision of East Broward County, Inc. vs. Department of Health and Rehabilitative Services*, 488 So.2d 886 (Fla. 1st DCA 1986). See also *Michelin Tire Corporation vs. Susan Ann Reese*, 531 So.2d 361 (Fla. 4th DCA 1988). BCI must therefore produce documents by persons and entities acting on its behalf, not just those strictly within the possession of BCI. BCI's objection should be denied.

4. BCI objects to producing any documents other than those solely related to BCI's regulated intrastate operations. The Attorney General and the Citizens do not object to BCI's limitation as it relates to specific customer complaints about slamming. However, to the extent other document requests relate more generally to analyses or matters related to slamming, the document requests should not be limited only to BCI's intrastate operations. Matters related to slamming either in the interstate jurisdiction or other states

in general are relevant to this proceeding because they deal with the same general problems experienced in Florida. Slamming is not a phenomena known only to Florida intrastate operations. Instead, it is a nationwide problem, and documents related to this nationwide problem are relevant to Florida intrastate operations. Therefore, to the extent that BCI's objection relates to anything other than specific customer complaints from other states or jurisdictions, BCI's objection should be denied.

5. BCI next objected to every request and instruction to the extent that the instruction or request called for information which is exempt from discovery by virtue of various privileges. BCI identified no such documents and gave no specific examples of where that privilege might apply. This objection should be denied unless and until BCI can identify specific documents to which it applies. Once BCI specifically identifies such documents, the Attorney General and the Citizens will then decide whether to seek an *in camera* inspection of those documents to determine the extent and validity of any claimed privilege.

6. BCI objected to each and every request insofar as the request was vague, ambiguous, voluminous, overly broad, imprecise, or utilized terms that are subject to multiple interpretations, etc. However, BCI provided no example whatsoever of any case where such a request for documents fell within that objection. This type of boilerplate objection is improper because BCI does not identify any request to which the objection relates. The objection should be denied.

7. Similarity, BCI objected to every request insofar the request was not reasonably calculated to lead to the discovery of admissible evidence, etc. However, BCI provided no example whatsoever of where this objection applied. Although BCI stated that it would attempt to note each instance where this objection applied, it did not do so in these objections. Since BCI provided no specific example where this objection might apply, it should be denied.

8. BCI objected to the instructions in the document request, insofar as they seek to impose obligations on BCI which exceed the requirements of the Florida Rules of Civil Procedure or Florida law. Like other objections, this boilerplate objection provided no specific example or any instance where this objection might apply. Since BCI was unable to provide any specific example or describe where it might apply, the objection should be denied.

9. BCI further objected to providing information to the extent that such information is already in the public record before the Florida Public Service Commission. The rules of discovery do not provide such an exemption from discovery. This invalid objection must be denied.

10. BCI objected to each and every request, general instruction, or definition insofar as it was unduly burdensome, expensive, oppressive, or excessively time

consuming to comply with as written. Like many of BCI's objections, BCI provides no example of where this objection might apply. Since BCI was unable to identify any instance where this would apply, the objection should be denied.

11. BCI objected to each and every request to the extent that the information constituted trade secrets. With respect to its claim of privilege, BCI must identify the document or documents it claims to be privileged, and at that point the Attorney General and the Citizens will decide whether to seek an *in camera* inspection of the documents to determine the validity or extent of the privilege.

12. BCI is due to produce the requested documents on or before October 16, 1997. Accordingly, the Attorney General and the Citizens request the Commission to rule on this motion on or before October 16, 1997, so that the documents will be produced on the required date.

Respectfully submitted,

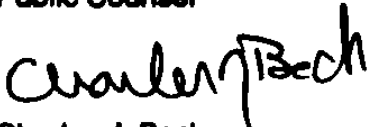
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**CERTIFICATE OF SERVICE**

**Docket No. 970882-TL**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 30th day of September, 1997.

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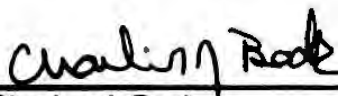
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