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ORIGINAL

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. ~~970000-51~~

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the First Motion to Compel Against AT&T 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
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG 1 - Fy I
- LPT 5
- CPC _____
- RCR CJB:bsr
- SEC 1 Enclosures
- WAS _____
- OTH _____

Sincerely,

Charles J. Beck
Deputy Public Counsel

RECEIVED & FILED

FPSC BUREAU OF RECORDS

DOCUMENT NUMBER - DATE

~~10025~~ SEP 30 5

FPSC - RECORDS/REPORTING

ORIGINAL

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.)

Docket No. 970882-TI

Filed: September 30, 1997

**FIRST MOTION TO COMPEL AGAINST AT&T
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 AT&T Communications of the Southern States, Inc. ("AT&T") to produce each of the documents requested in the Citizen's First Set of Requests for Production of Documents to AT&T. In support of this motion, the Attorney General and the Citizens submit the following:

1. On September 10, 1997, the Citizens served their first set of requests for production of documents to AT&T. These requests for documents, served in collaboration with the Attorney General, seek documents necessary for the Attorney General and the Citizen... to prepare our case. On September 22, 1997, AT&T filed its objections to this request for production of documents.

2. **AT&T's objections begin by stating that it reserves the right to supplement, revise, or modify the objections it filed on September 22, 1997. By making this claim, AT&T seeks to unilaterally change Commission Order PSC-97-1071-PCO-TI issued September 12, 1997, which requires objections to be made within 10 days of service of the discovery request. The order specifically states that objections "shall" be made within this time frame. AT&T has no right to unilaterally change the requirements of the order. The Commission should reject AT&T's claim that it can supplement, revise, or modify its objections in contravention of the Commission's order.**

3. **AT&T objects to the definitions of "you," "your," "company," and "AT&T" in the request for documents. Definition number 2 of the request for documents stated that the terms "you" and "your" meant AT&T (AT&T of the Southern States, Inc.) together with its officers, employees, consultants, agents, representatives, attorneys (unless privileged), and any other person or entity acting on behalf of AT&T Communications of the Southern States, Inc. The document request does not seek to have AT&T Communication of the Southern States, Inc., procure documents from every affiliated company of AT&T Communications of the Southern States, Inc. Rather, it seeks only those documents from persons or entities acting on behalf of AT&T Communications of the Southern States, Inc. 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 AT&T Communications of the Southern States, Inc. 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 Rose*, 531 So.2d 361 (Fla. 4th DCA 1988). AT&T Communications of the Southern States, Inc. must therefore produce documents by persons and entities acting on its behalf, not just those strictly within the possession of AT&T Communications of the Southern States, Inc. AT&T's objection should be denied.

4. AT&T objects to producing any documents other than those solely related to AT&T's regulated intrastate operations. The Attorney General and the Citizens do not object to AT&T'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 AT&T'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 AT&T's objection relates to anything other than specific customer complaints from other states or jurisdictions, AT&T's objection should be denied.

5. AT&T 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. AT&T identified no such documents and gave no specific examples of where that privilege might apply. This objection should be denied unless and until AT&T can identify specific documents to which it applies. Once AT&T 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. AT&T 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, AT&T 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 AT&T does not identify any request to which the objection relates. The objection should be denied.

7. Similarly, AT&T objected to every request insofar the request was not reasonably calculated to lead to the discovery of admissible evidence, etc. However, AT&T provided no example whatsoever of where this objection applied. Since AT&T could provide no specific example where this objection might apply, it should be denied.

8. AT&T objected to the instructions in the document request, insofar as they seek to impose obligations on AT&T 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 AT&T was unable to provide any specific example or describe where it might apply, the objection should be denied.

9. AT&T 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. AT&T 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 AT&T's objections, AT&T provides no example of where this objection might apply. Since AT&T was unable to identify any instance where this would apply, the objection should be denied.

11. AT&T objected to each and every request to the extent that the information constituted trade secrets. With respect to its claim of privilege, AT&T 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. At&T objected to every request on the grounds that AT&T is not a party to this proceeding. 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. AT&T's objection should be denied.

13. AT&T objected to each and every request to the extent that it sought information that AT&T is prohibited from disclosing pursuant to Section 364.24, Florida Statutes, but AT&T identified no such information. This statute, which deals with disclosing customer account information, has a specific exemption for matters required by subpoena, court order, other processes of court, or as otherwise allowed by law. Formal requests for production of documents in a proceeding before the Florida Public Service Commission qualify as "otherwise allowed by law." Therefore, in any event, even if AT&T had identified any such documents, the documents would be exempt from Section 364.24, because they are required as otherwise allowed by law. AT&T's objection should be denied.

14. Finally, AT&T states that it would limit its search of documents responsive to the requests to those that could be reasonably expected to contain the requested information requested by (sic) BellSouth. Apparently AT&T lifted this objection from a response to some discovery request made by BellSouth in another docket. Nonetheless, the Attorney General and the Citizens do not object to limiting the search for documents responsive to the requests for documents to those files that are reasonably expected to contain the requested information.

15. **AT&T is due to produce the requested documents on or before October 10, 1997. Accordingly, the Attorney General and the Citizens request the Commission to rule on this motion on or before October 10, 1997, so that the documents will be produced on the required date.**

Respectfully submitted,

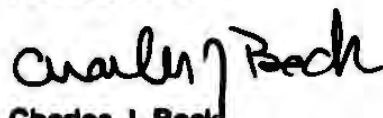
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CERTIFICATE OF SERVICE

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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