

frontier

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November 3, 1997

BY OVERNIGHT MAIL

**Mr. Walter D'Hasselaar
Executive Secretary
Division of Communications
Florida Public Service Commission
2450 Shumard Oak Blvd.
Tallahassee, FL 32399-0850**

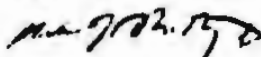
Re: Docket No. 97082-T1

Dear

Enclosed for filing please find an original plus 10 copies of the Opposition of Frontier Communications Services Inc. to First Motion To Compel.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,



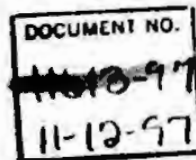
Michael J. Shortley, III

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APP
CAF
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RRR
SEL



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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) Docket 970882-T1
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)

**OPPOSITION OF FRONTIER COMMUNICATIONS
SERVICES INC. TO FIRST MOTION TO COMPEL**

Frontier Communications Services Inc. ("Frontier") submits this opposition to the Attorney General's first motion to compel production of documents. In support of this opposition, Frontier states as follows:

1. This action seeks initiation of a proceeding by the Commission to investigate the practice of "slamming," i.e., the unauthorized change of a consumer's long distance carrier. In its response the Attorney General's document request, Frontier demonstrated that it has experienced on a minuscule amount of action that could even arguably be considered slamming. Frontier's response showed that there were only three allegations against it relating to slamming within the State of Florida within the last year. The Attorney General does not deny this.

2. Nonetheless, the Attorney General seeks to compel the production of documents that relate to virtually every aspect of Frontier's long distance business operations, including areas that have absolutely no nexus to the State of Florida. The breadth and scope of the document request is substantial, yet


nowhere does the Attorney General attempt to demonstrate the necessity of receiving such documents from Frontier. The Attorney General only claims that Frontier failed to demonstrate the scope of the burden of complying with the request. Frontier did not make a particularized showing of burden, because, on its face, the document request is oppressive. Requests such as "provide *all* memos, correspondence, or e-mail" (Request No. 2), "provide *each* document" (Request No. 3) and the like are plainly overbroad and burdensome. Indeed, Frontier estimates that it would take several *hundred* person-hours to respond fully to the Attorney General's document request. As such, the costs to Frontier of complying with the document request would far outweigh any benefits that could accrue to the Attorney General or the Commission thereby.

3. More importantly, the scope of the investigation sought by the Attorney General is beyond the Commission's jurisdiction. The Attorney General wishes the Commission to initiate an investigation into the practice of slamming. However, as the Attorney General acknowledges, section 258(a) of the Communications Act reserves to the Federal Communications Commission ("FCC"), *not* this Commission, the authority to prescribe regulations addressing changes in consumers' long distance and local carriers. It reserves to State Commissions only the authority to enforce the FCC's regulations. The Attorney General nowhere demonstrates how the requested information or the investigation itself would relate to any enforcement action.

4. The Attorney General's reliance upon the savings provision of section 258(a) is misplaced. While that section preserves states authority to enforce the FCC's regulations with respect to (purely) intrastate services, it does not reach as far as the Attorney General contends. Indeed, under the Attorney General's apparent interpretation, State Commissions would be free to address slamming any way they wish. That interpretation is not only flatly inconsistent with the language of section 258(a), it would interpret the exclusive authority vested in the FCC to prescribed regulations out of existence. However, as the courts have made clear, such an interpretation of a savings clause is untenable. See, e.g., *Marcus v. AT&T Corp.*, 938 F. Supp. 1158 (S.D.N.Y. 1996); *Vermont v. Oncor Communications, Inc.*, 166 F.R.D. 313 (D. Vt. 1996). On this basis, the investigation sought by the Attorney General as well as the scope of the document request are beyond this Commission's jurisdiction to entertain.

For the foregoing reasons, the Commission should deny the Attorney General's motion to compel in its entirety.

Respectfully submitted,


Michael J. Shortley, III

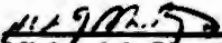
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November 4, 1997

Certificate of Service

I hereby certify that, on this 4th day of November, 1997, copies of the foregoing Opposition of Frontier Communications Services Inc. to first Motion To Compel were served by first-class mail, postage prepaid, upon the parties on the attached service list.



Michael J. Shortley, III

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