

LAW OFFICES
Messer, Caparello & Self
A Professional Association

Post Office Box 1876
Tallahassee, Florida 32302-1876
Internet: www.lawfla.com

December 8, 2003

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Commission Clerk and Administrative Services
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket Nos. 030867-TL, 030868-TL, 030869-TL, and 030961-TI

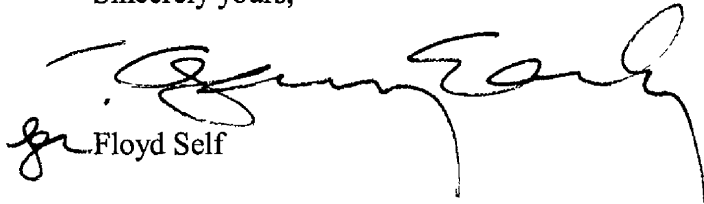
Dear Ms. Bayó:

Enclosed for filing on behalf of AT&T Communications of the Southern States, LLC are an original and fifteen copies of the AT&T of the Southern States, LLC's Response to the Motion to Compel Against AT&T, and in the Alternative, Motion for Protective Order in the above referenced dockets.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,


Floyd Self

FRS/amb
Enclosures
cc: Parties of Record

DOCUMENT NUMBER - DATE
12624 DEC-8 03
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Verizon Florida Inc. to reform intrastate network access and basic local telecommunications rates in accordance with Section 364.164, Florida Statutes.

DOCKET NO. 030867-TL

In re: Petition by Sprint-Florida, Incorporated to reduce intrastate switched network access rates to interstate parity in revenue-neutral manner pursuant to Section 364.164(1), Florida Statutes.

DOCKET NO. 030868-TL

In re: Petition for implementation of Section 364.164, Florida Statutes, by rebalancing rates in a revenue-neutral manner through decreases in intrastate switched access charges with offsetting rate adjustments for basic services, by BellSouth Telecommunications, Inc.

DOCKET NO. 030869-TL

In re: Flow-through of LEC switched access reductions by IXCs, pursuant to Section 364.163(2), Florida Statutes.

DOCKET NO. 030961-TI

FILED: DECEMBER 8, 2003

**AT&T OF THE SOUTHERN STATES, LLC'S
RESPONSE TO THE MOTION TO COMPEL AGAINST AT&T,
AND IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER**

AT&T of the Southern States, LLC ("AT&T"), pursuant to Rule 28-106.204, hereby responds to the Motion to Compel filed on December 4, 2003 by the Office of Public Counsel ("OPC"), requests that the Commission deny the Motion to Compel, in the alternative, pursuant to Rule 1.280(c), Fla.R.Civ.P. requests entry of a protective order preventing disclosure of the information sought by the OPC in its November 19, 2003 request for production of documents to AT&T, and states:

1. The OPC has moved to compel the production of documents from AT&T, an IXC, regarding AT&T's decision to market its long distance service in the territories of each of the three major local exchange telecommunications companies that operate in Florida.

2. As set forth on AT&T's specific objections to the OPC's request for production of documents, the information requested is the most sensitive imaginable for a competitive provider of long distance service. It is difficult to conceive that the legislature, in formulating a system by which **local exchange telecommunications companies** were to petition to rebalance their rates and access charges, intended for that process to result in the disclosure of the business decision making process of long distance service providers. The OPC request seeks information that is not based on some objective measure of costs or revenues, but rather burrows deep into the subjective business decision making process used to determine whether AT&T will or will not enter a market. AT&T has not divulged that information to anyone in any context, and will not do so in this proceeding.

3. Section 364.164(3), Fla. Stat. (2003) recognized that the rebalancing dockets were not to be turned into telecommunications "free-for-alls" by providing that

Any discovery or information requests under this section must be **limited to a verification of historical pricing units** necessary to fulfill the commission's specific responsibilities under this section of ensuring that the company's rate adjustments make the revenue category revenue neutral for each annual filing. (e.s.)

This express limitation on discovery applies to the **entire process** of rate rebalancing under that section, i.e. 364.164, Fla. Stat. (2003). The OPC request does not seek information reasonably related to a verification of any local exchange telecommunications company's historical pricing units, or for that matter the historical pricing units of any IXC. Therefore the request for production exceeds the scope of discovery as established by Section 364.164, Fla. Stat. (2003) and should therefore be denied on that basis alone.

4. In addition to the foregoing, it is not the purpose of discovery under Rule 1.280, Fla.R.Civ.P. or the rules of the Commission "to afford litigant avenue to pry into adversary's

business or to go on fishing expedition to uncover business methods, confidential relations, or other facts pertaining to business.” *Grooms v. Distinctive Cabinet Designs, Inc.* 846 So.2d 652, 655 (Fla. 2nd DCA 2003), citing *Inrecon v. Vill. Homes at Country Walk*, 644 So. 2nd 103 (Fla. 3rd DCA 1994).

5. In a case in which a litigant is seeking trade secret information, the “burden is on party seeking discovery of confidential commercial information to establish information is sufficiently relevant and necessary to case to outweigh harm disclosure would cause to opposing party.” *Grooms, supra* at 655. In determining the scope of inquiry, even as presented to a public agency, the First District has held that

[w]hen confronted with a claim of trade secrets or proprietary information in opposition to a discovery request, a trial court (or, as in this case, an administrative hearing officer) must first determine if the materials sought to be protected are, in fact, trade secrets and proprietary information. Upon such a showing, **the party seeking discovery must demonstrate a reasonable necessity to obtain the information.** (e.s.)

Scientific Games, Inc. v. Dittler Bros., Inc. 586 So.2d 1128 (Fla. 1st DCA 1991).

6. In this case, there can be no question but that the information sought by the OPC is trade secret information. As indicated previously, it is difficult to imagine information that could be more sensitive and confidential than information relative to a businesses decision to compete in market. More to the point, the OPC can make no credible argument that the information sought has any bearing whatsoever to the issues of rate and access charge rebalancing that are the subject of this proceeding. The information sought is of such a high degree of sensitivity that even the application of a protective order would be insufficient to protect AT&T from the adverse consequences of revealing how it has positioned itself competitively by exposing all of the financial and non-financial

considerations that go into the decision to enter a market.

7. There is absolutely nothing in Section 364.184, Fla. Stat. (2003) that provides the requisite necessity for the disclosure of the sensitive IXC trade secret information sought by the OPC. The statute does not allow the Commission to apply the role of the IXCs to its decision-making process. Rather, the process is to be based solely on the ILEC's balancing of local service rates and access charges.

8. Provisions of revenue neutrality and parity under Section 364.164, Fla. Stat. (2003) apply only to the rate and access charge rebalancing to be achieved by the ILECs. The only **possible** issue that could be applicable to IXCs is whether the lowered access charges are properly flowed through to the consumer. The issue of flow-through is strictly one of accounting, an issue that can be easily determined after the access rates are set by the Commission. However, the flow-through of access charge savings has absolutely nothing to do with an IXC's confidential and trade secret business decisions as requested by the far ranging, overly burdensome and incredibly intrusive request made by the OPC.

9. As in *Scientific Games, supra.*, the parties may litigate and the Commission may properly resolve the rebalancing docket issues as framed by Section 364.184, Fla. Stat. (2003) without resort to the trade secret disclosure requested. The nature and scope of the review in this proceeding is to determine the rate structure to be applied by local exchange telecommunications companies. Section 364.164, Fla. Stat. (2003) was not intended, and should not be applied to compel providers of interstate telecommunications services to reveal irrelevant and immaterial information regarding its innermost competitive marketing secrets.

10. In this case, the OPC has failed to demonstrate a "reasonable necessity" for the

production of AT&T's trade secret marketing decision making process. the information sought goes far beyond the express legislative limitation on the scope of discovery set forth in Section 364.164(3), Fla. Stat. (2003). Therefore, the OPC's Motion to Compel should be denied.

WHEREFORE, for the reasons set forth herein, AT&T of the Southern States, LLC requests that the Commission deny the Motion to Compel filed by the OPC on the ground that the information sought exceeds the scope of discovery under Section 364.164(3), Fla. Stat. (2003), or in the alternative, grant a protective order preventing the disclosure of the documents on the basis that the OPC has failed to demonstrate reasonable necessity for those documents to resolve the rebalancing docket issues as framed by Section 364.184, Fla. Stat. (2003).

RESPECTFULLY SUBMITTED this 8th day of December, 2003.


Floyd Self, Esq.
MESSER, CAPARELLO & SELF, P.A.
215 S. Monroe Street, Suite 701
Tallahassee, FL 32302
(850) 222-0720

TRACY W. HATCH, ESQ.
101 N. Monroe Street, Suite 700
Tallahassee, FL 32302-1876
(850) 425-6360

Attorneys for AT&T Communications of
the Southern States, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by U. S. Mail this 8th day of December, 2003.

Felicia Banks, Esq.*
Office of General Counsel, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Patricia Christensen, Esq.*
Office of General Counsel, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Lee Fordham, Esq.*
Office of General Counsel, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Nancy B. White
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

Richard A. Chapkis, Esq.
Verizon Florida, Inc.
P.O. Box 110, FLTC 0007
Tampa, FL 33601-0110

John Fons, Esq.
Ausley Law Firm
P.O. Box 391
Tallahassee, FL 32302

Susan S. Masterton, Esq.
Sprint-Florida, Incorporated
Sprint Communications Company limited Partnership
P.O. Box 2214
Tallahassee, FL 32316-2214

Michael A. Gross
Vice President, Regulatory Affairs
& Regulatory Counsel
Florida Cable Telecommunications Assoc., Inc.
246 E. 6th Avenue
Tallahassee, FL 32301

Tracy W. Hatch, Esq.
AT&T Communications of the Southern States, LLC
101 N. Monroe Street, Suite 701
Tallahassee, FL 32301

Lisa Sapper
AT&T
1200 Peachtree Street, NE, Suite 8100
Atlanta, GA 30309

Donna McNulty, Esq.
WorldCom
1203 Governors Square Blvd, Suite 201
Tallahassee, FL 32301-2960

De O'Roark, Esq.
MCI WorldCom Communications, Inc.
6 Concourse Parkway, Suite 3200
Atlanta, GA 30328

Mr. Mark Cooper
AARP
504 Highgate Terrace
Silver Spring, MD 20904

Ms. Karen Jusevitch
Mr. Carlos Muniz
Gray, Harris & Robinson
P.O. Box 11189
Tallahassee, FL 3230203189

Mr. John Feehan
Knology of Florida, Inc.
1241 O. G. Skinner Drive
West Point, GA 31833-1789

Michael B. Twomey, Esq.
P.O. Box 5256
Tallahassee, FL 32314-5256

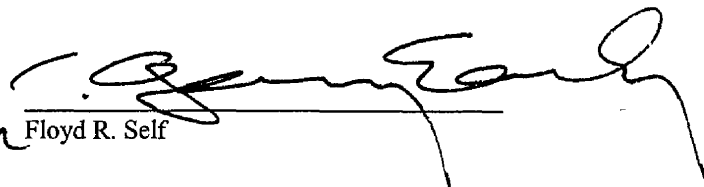
Charles Beck, Esq.
Office of Public Counsel
111 W. Madison Street, #812
Tallahassee, FL 32399-1400

Jack Shreve
Senior Special Counsel for Consumer Affairs
Office of the Attorney General
PL-01 The Capitol
Tallahassee, FL 32399

Harris Anthony
BellSouth Long Distance, Inc.
400 Perimeter Center Terrace, #350
Atlanta, GA 30346-1231

Micki Chen, General Counsel
Verizon Long Distance
1515 N. Courthouse Road, 5th Floor
Arlington, VA 22201

Anthony Gillman, General Counsel
Verizon Select Services, Inc.
201 N. Franklin Street, 37th Floor
MC FLTC0007
Tampa, FL 33602-5167


Floyd R. Self