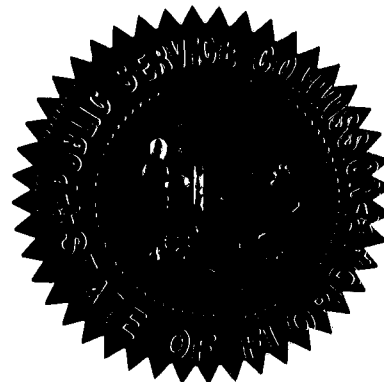


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070263-TP

In the Matter of:

PETITION FOR DECLARATORY STATEMENT
REGARDING 911 FEE AND TASA CHARGES
TO FLORIDA COUNTIES AND AGENCIES,
BY BELLSOUTH TELECOMMUNICATIONS, INC.
D/B/A AT&T FLORIDA.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 3

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, July 10, 2007

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

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FLORIDA PUBLIC SERVICE COMMISSION 05891 JUL 13 08

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 JAMES MEZA, III, ESQUIRE, representing AT&T Florida.

3 MICHAEL COOKE, GENERAL COUNSEL, and KIRA SCOTT,

4 ESQUIRE, representing the Florida Public Service Commission

5 Staff.

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: And with that, we will begin our
3 discussions with Item 3, and I'll look to staff to present the
4 item.

5 MS. SCOTT: Good morning, Commissioners. Kira Scott
6 appearing on behalf of Commission staff. Item 3 is staff's
7 recommendation addressing AT&T's request for a declaratory
8 statement. Staff is recommending that the Commission deny
9 AT&T's request. But before discussing the basis for staff's
10 belief that the Commission may properly deny that request, I
11 would like to briefly discuss the circumstances involved.

12 In December 2005, AT&T informed Commission staff that
13 it would no longer bill the 911 fee and the TASA surcharge to
14 the counties within its service territories because the
15 counties may be immune from paying such fees and surcharges.

16 AT&T's decision to not bill the 911 fee was based on
17 a dispute it has with the Orange County Sheriff's Office. That
18 office objected to paying the 911 fee because of its
19 interpretation of a 1987 Attorney General's opinion in which
20 the AG opined that state agencies are immune from paying the
21 911 fee. Furthermore, AT&T unilaterally decided to stop
22 billing the TASA surcharge because it believes that the nature
23 of the TASA surcharge is similar to the 911 fee.

24 Commission staff wrote a letter telling AT&T it did
25 not follow the statutorily prescribed procedure for handling

1 objections to the 911 fee. Staff requested AT&T to reimplement
2 the billing of the 911 fee and the TASA surcharge and further
3 requested that AT&T backbill for any amounts not collected.
4 Subsequently, AT&T filed the request that is the subject of
5 staff's recommendation. AT&T is asking the Commission to make
6 a determination based on AT&T's past conduct. AT&T has
7 discontinued billing and collecting the fees and surcharges for
8 over a year now.

9 Case law supports staff's recommendation that a
10 request for a declaratory statement is properly denied where
11 the conduct in question has already occurred. The purpose of a
12 declaratory statement is to clear up any doubt before engaging
13 in the behavior; that is, in order to reduce the need and cost
14 of litigation.

15 AT&T has also asked the Commission to make a
16 determination that will affect the rights of third parties. In
17 this case, the various counties within AT&T's service
18 territories are those third parties. There is a due process
19 issue that could be resolved within the context of a compliance
20 proceeding or enforcement action.

21 In addition, AT&T requests that the Commission make a
22 determination as to third party, as to a third party's conduct,
23 in this case the Orange County Sheriff's Office. The rule
24 clearly states that a declaratory statement is an inappropriate
25 means for determining the conduct of a third party.

1 Staff recommends that the Commission deny AT&T's
2 request. Staff is available for questions, and participation
3 is at the Commission's discretion.

4 CHAIRMAN EDGAR: Thank you.

5 Mr. Meza, before I recognize you, let me just ask a
6 few questions.

7 MR. MEZA: Yes, ma'am.

8 CHAIRMAN EDGAR: And then as you make your comments,
9 maybe you can respond to these as part of it.

10 I recognize that in the information before us we have
11 a deadline of July 13th to act on the request for a declaratory
12 statement and that is Friday, so clearly we need to take some
13 action today. But yet I have to wonder as this issue, which
14 does appear to me to be a real issue of both fact and law, that
15 as this issue has bounced around for a while I do wonder if we
16 are in the most appropriate posture to be able to move forward.
17 And I am curious as to whether we may be able to, through
18 further discussions, take a different approach, and if you
19 could speak to that and also share other comments as you would
20 like.

21 MR. MEZA: Thank you, Madam Chairman. Jim Meza on
22 behalf of Bell -- AT&T Florida. Still not quite there yet.

23 (Laughter.)

24 I agree with your assessment, ma'am, that additional
25 discussions between Mr. Cooke and your staff with AT&T Florida

1 is probably the best course of action, and we would be willing
2 to waive the 90-day statutory deadline associated with the
3 request for declaratory statement to allow those discussions to
4 take place.

5 Bottom line is that we find ourselves in the middle
6 of two opposing views: One of your staff, and the other is at
7 least one Florida county regarding the application of these
8 fees to them for the telephone lines that they use. We have no
9 financial interest in your decision. All we are is a billing
10 agent. We bill, collect it, and in 911 we give it back to the
11 county. So the county is refusing to pay money that's
12 ultimately going to be back to them. And in TASA we remit the
13 money to the FTRI.

14 We just need some guidance. We believe that as far
15 as backbilling, the declaratory statement was the most
16 appropriate means to get your guidance before we engaged in
17 backbilling and likely billing disputes with the counties. But
18 we're open to any suggestion and any compromise and any
19 solution that would give us whatever guidance and direction we
20 need in advance of, you know, dealing with the counties in
21 resolving this issue.

22 CHAIRMAN EDGAR: Thank you, Mr. Meza.

23 And, Commissioners, before I look to see if you have
24 comments or questions, I will ask Mr. Cooke to chime in for us
25 here. I, you know, I think what we want to do is move this

1 issue forward and get resolution on the issues that are before
2 us. I just have a concern as to whether issuing a dec.
3 statement or not issuing a dec. statement today is the best way
4 to get to that type of resolution. And so if you could please
5 speak to some of the timing and other issues, Mr. Cooke.

6 MR. COOKE: Yes, Madam Chair. I think that we could
7 perhaps benefit from further discussions among staff and the
8 company or other interested parties. As long as there is a
9 waiver of the time frame, then I'm very comfortable --
10 essentially we would be deferring this item if that's what the
11 Commission chose to do at this point. And seeing if we can
12 reach some kind of -- I mean, there's some legitimate questions
13 here, but we also have some concerns about whether a
14 declaratory statement is an appropriate way to resolve those
15 questions and that's the dilemma we're in. But as long as
16 there's a waiver in place I think that we all would benefit
17 from further discussions.

18 CHAIRMAN EDGAR: Okay. Thank you, Mr. Cooke.

19 And, Mr. Meza, I did hear you say that on behalf of
20 your client you would be willing today to waive that statutory
21 time frame and engage in further discussions with our staff?

22 MR. MEZA: Yes, ma'am.

23 CHAIRMAN EDGAR: Commissioners, questions, comments,
24 thoughts.

25 Commissioner McMurrian.

1 COMMISSIONER McMURRIAN: Chairman, I'd just say I
2 think you read my mind. I met with staff on this last week. I
3 was concerned that, although I understand their arguments about
4 the declaratory statement, that sort of where does it leave us?
5 And it's just going to add, it seems like it's just going to
6 add a lot more delay in getting the problem resolved one way or
7 the other and might increase the exposure in this, in this
8 additional time as we switch gears and figure out some other
9 way to address it. It just seems like there, there ought to be
10 some way that the company and staff, and if there are other
11 parties involved, can somehow look into this and come up with
12 some kind of approach that would possibly avoid an enforcement
13 proceeding beginning and this sort of starting over from zero.
14 So I definitely support staff working with the company to see
15 if there's some way to address this in a more efficient manner.

16 CHAIRMAN EDGAR: Thank you, Commissioner.

17 Commissioners, any other thoughts, comments or
18 direction?

19 Commissioner Carter.

20 COMMISSIONER CARTER: I would just -- you know, if
21 it's the will of the Commission to defer this, that's fine with
22 me. But I would just say that in the context of this is that
23 there are interests that are not represented here before us
24 today and that gives me concern.

25 CHAIRMAN EDGAR: Commissioner, and that is one of the

1 reasons why I'd like to, if we're all amenable, take some
2 additional time and try to get all of the parties to the table,
3 and I'm not sure that we are in that posture today.

4 Commissioner Skop.

5 COMMISSIONER SKOP: Thank you, Madam Chair. And I
6 would just like to echo Commissioner McMurrian's and
7 Commissioner Carter's comments on that. I also agree that
8 moving forward with a dec. statement would be somewhat
9 problematic. And also the due process arguments that staff
10 articulated but really aren't in the recommendation, those kind
11 of came up, but those crossed my mind also in reading this in
12 terms of if you make a dec. statement, how does that affect
13 parties not represented and the interactions they may have
14 along those lines? So I just wanted to opine in that matter.
15 Thanks.

16 CHAIRMAN EDGAR: Okay. Thank you. And I recognize
17 also that the staff recommendation was to not issue a
18 declaratory statement today. And, again, from where I sit,
19 either to do so or to not do so I'm not sure moves this issue
20 forward and gets us to hopefully a resolution. So,
21 Commissioners, any other comments?

22 Okay. Then, Mr. Cooke, I think I see the will of the
23 body to accept the waiver of the time limit that Mr. Meza has
24 offered to us and to direct staff to have further discussions.
25 And if you would tell us what we need to do to get in the

1 appropriate posture.

2 MR. COOKE: I think the cleanest thing would be a
3 motion to defer, if we can get that, or at least a sense that
4 that's the majority of the Commission to defer this item
5 pending further discussion between staff and the company and
6 other interested parties, if that's appropriate.

7 CHAIRMAN EDGAR: All right. Commissioner Carter, are
8 you ready to make that motion?

9 COMMISSIONER CARTER: I so move.

10 CHAIRMAN EDGAR: Thank you. Is there a second?

11 COMMISSIONER SKOP: Second.

12 CHAIRMAN EDGAR: There is a motion and a second. All
13 in favor, say aye.

14 (Unanimous affirmative vote.)

15 Opposed? Show it adopted.

16 Mr. Meza, thank you. And we look forward to hearing
17 from you, staff and other parties at some time in the near
18 future on this issue. Thank you.

19 (Agenda Item 3 concluded.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 12th day of July, 2007.

Linda Boles
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