

Diamond Williams

100340-TP

From: Bruette Davis [bdavis@kagmlaw.com]
Sent: Monday, July 12, 2010 4:28 PM
To: Filings@psc.state.fl.us
Cc: Vicki Gordon Kaufman; Adam Teitzman; Tracy Hatch; de.oroark@verizon.com
Subject: Docket No. 100430-TP
Attachments: ATMS Mot to Quash Subpoenas-Ex A.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

- a. The name, address, telephone number and email for the person responsible for the filing is:

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- b. This filing is made in Docket No. 100430-TP, In re: Investigation of Associated Telecommunications Management Services, LLC (ATMS) companies for compliance with Chapter 25-24, F.A.C., and applicable lifeline, eligible telecommunication carrier, and universal service requirements.

- c. The document is filed on behalf of Associated Telecommunications Management Services, LLC.
- d. The total pages in the document are 10 pages.
- e. The attached document is Objections to Non-Party Subpoenas and Motion to Quash.

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7/12/2010

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7/12/2010

100340-TP

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of Associated
Telecommunications Management
Services, LLC (ATMS) companies
for compliance with Chapter 25-
24, F.A.C., and applicable lifeline,
eligible telecommunication carrier, and
universal service requirements.

~~Docket No. 100430-TP~~

Filed: July 12, 2010

**OBJECTIONS TO NON-PARTY SUBPOENAS
AND MOTION TO QUASH**

Bellerud Communications, LLC, LifeConnex Telecom, LLC, Triarch Marketing, Inc., American Dial Tone, Inc., BLC Management, LLC, and All American Telecom, Inc. (Companies), pursuant to rule 1.351, Florida Rules of Civil Procedure, file this Objection and Motion to Quash the subpoenas served on BellSouth Telecommunications, Inc., d/b/a AT&T Florida Southeast (AT&T) and Verizon Florida, Inc. (Verizon). Production may not be made under such subpoenas until the nature of this investigation is revealed, the relevance of the documents sought made clear, and this objection resolved. As grounds therefor, the Companies state:

Background

1. This docket was opened on June 28, 2010. A review of the docket file shows that two documents have been filed since it was opened. The first is a form entitled "Request to Establish Docket" in which Commission Staff requested that this docket be opened and be styled an investigation.

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2. The second document, filed the next day, is a request that subpoenas¹ be issued. The subpoenas which are the subject of this Objection request that AT&T and Verizon produce a wealth of customer information concerning customers of the Companies as well as the number of UNE/Wholesale Local Platform (WLP) lines each company has purchased from AT&T and/or Verizon from October 2008- April 2009. (Exhibit A).

Procedure

3. As a preliminary matter, the Companies note that Commission Staff has failed to comply with the procedure set out in Rule 1.351 (b), Florida Rules of Civil Procedure, for the issuance of non-party subpoenas.² Rule 1.351(b) requires that *prior* to the issuance of a subpoena to a non-party:

notice shall [be] serve[d] on every other party of the intent to serve a subpoena under this rule at least 10 days before the subpoena is issued if service is by delivery....

As the notes to the rule reflect, this rule is intended to avoid the premature production of documents by non-parties. No such notice of the intent to issue non-party subpoenas was served on any of the Companies. Thus, Staff has failed to comply with this rule and the non-party subpoenas are void on that basis alone.

4. Rule 1.351(b) also provides that a party has ten (10) days from service of the notice to file an objection to the non-party subpoena. Because no notice was given to the Companies, they have filed this Objection within ten (10) days of service of the first subpoena of which they are aware, on July 2, 2010.

¹ This objection addresses only the subpoenas served on AT&T and Verizon, not those served on the Companies, which will be addressed at a later time.

² Section 120.569(2)(c)(f), Florida Statutes, provides that the presiding officer has the power to effect discovery in accord with the Florida Rules of Civil Procedure. Thus, the subpoena rules of the Florida Rules of Civil Procedure must be followed.

5. Rule 1.351(b) further provides that if a party serves an objection to a non-party subpoena then “the documents or things *shall not be produced* pending resolution of the objection in accordance with subdivision (d).” (Emphasis added). Thus, neither AT&T nor Verizon may produce the documents at issue pending resolution of this Objection.

Basis for Objections to Non-Party Subpoenas

6. As noted above, this docket was opened on June 28, 2010 and styled an investigation. There is no information in the docket file other than the form requesting that the docket be opened and the subpoenas that were issued. That is, there is absolutely no information regarding what the Commission Staff is investigating or what issues they believe may be at issue. In the face of this dearth of any information regarding the nature of this docket, AT&T and Verizon have been subpoenaed to produce an extensive amount of very sensitive competitive information related to customers of the Companies, including names, addresses and telephone numbers. They have been asked to compile it in a way that is essentially a customer list. Compilation of this list in this format (a customer list of the Companies’ numerous customers) should not be assembled by the subpoenaed non-parties unless and until the Commission Staff has made a compelling showing that such information is needed for a specific and legitimate purpose within the Commission’s jurisdiction.³

7. Balanced against the broad non-party subpoenas is the fact that Commission Staff has provided *no information* as to why this docket was opened or why Staff seeks extensive information from AT&T and Verizon regarding customers of the Companies. Prior to the production of information of this type, Commission Staff should be required to make a

³ The Companies are aware of the Commission’s rule protecting confidential information. However, such a rule does not justify the requirement that competitors of the Companies compile and have access to the Companies’ customer lists without a showing as to how this information is relevant to this docket.

compelling showing as to what the information sought is needed for and how it is relevant to the matters which Staff believes are at issue, but of which it has not apprised the Companies.

8. The issuance of a subpoena is not a blanket vehicle to request a broad and vast array of documents which are not tied in any way to matters at issue in a proceeding. However, that appears to be exactly what Commission Staff has done with its non-party subpoenas. This is clearly impermissible and thus, the non-party subpoenas must be quashed.

9. Information sought in a subpoena must be relevant to the matters at issue. This standard is clear from the applicable rules and statutes. For example, section 120.569(2)(k)1, Florida Statutes, addresses the issuance of subpoenas in administrative proceedings. It states that a subpoena should be quashed if it "... requires the production of irrelevant material." The non-party subpoenas at issue here fail to meet this threshold standard because there has been no notification of what Staff believes is at issue or how the requested documents might relate to that concern. Prior to the requirement that non-parties produce highly sensitive competitive information, due process and fair play require that a showing be made as to the subject of the investigation and the relevance of any requested information.

10. Florida law is clear on the limits of subpoena power. A subpoena must be "properly limited in scope, relevant in purpose, and specific in directive," in order not to be unduly burdensome." *Check 'N Go of Florida, Inc. v. State*, 790 So.2d 454, 460 (Fl. 5th DCA 2001), quoting, *Dean v. State*, 478 So.2d 38, 40 (Fl. 1985). The non-party subpoenas fail this test.

WHEREFORE, pursuant to rule 1.351, Florida Rules of Civil Procedure, the

Companies:

1. Object to the subpoenas served on AT&T and Verizon;
2. Request that such information not be produced by AT&T and Verizon; and
3. Request that the subpoenas be quashed.

s/ Vicki Gordon Kaufman
Vicki Gordon Kaufman
Keefe Anchors Gordon & Moyle, PA
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 681-3828
Facsimile: (850) 681-8788
vkaufman@kagmlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Objections to Non-Party Subpoenas and Motion to Quash has been served by electronic mail and by U.S. Mail this 12th day of July, 2010 to:

Adam Teitzman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
ateitzma@psc.state.fl.us

Tracy Hatch
AT&T Communications of the Southern States, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
thatch@att.com

Dulaney (De) O'Roark III
Verizon Florida LLC
5055 North Point Parkway
Alpharetta, GA 30022
de.oroark@verizon.com

s/ Vicki Gordon Kaufman
Vicki Gordon Kaufman

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Docket No. 100340-TP Investigation)
of Associated Telecommunications)
Management Services, LLC (ATMS))
companies for compliance with Chapter 25-)
24, F.A.C., and applicable lifeline, eligible)
telecommunication carrier, and universal)
service requirements.)

SUBPOENA DUCES TECUM
WITHOUT DEPOSITION

THE STATE OF FLORIDA

TO: Dulaney O'Roark III, Verizon Florida, Inc., 5055 North Point Parkway, Floor 1, Alpharetta, GA 30022

YOU ARE COMMANDED to appear at 2540 Shumard Oak Boulevard, Tallahassee, FL 32399, on July 19, 2010, by 5:00 p.m., or at such other time and place as may be mutually agreed upon by counsel, and to have with you at that time and place the following:

The documents listed in Attachment A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN.

YOU ARE SUBPOENAED by the following attorney to (1) appear as specified, or (2) furnish the records instead of appearing as provided above, and, unless excused from this subpoena by this attorney or the Commission, you shall respond to this subpoena as directed.

DATED June 30, 2010

Ann Cole, Commission Clerk
Office of Commission Clerk
Florida Public Service Commission

By: *Dorothy Menasco*
Dorothy Menasco
Chief Deputy Commission Clerk

(SEAL)

Adam Teitzman
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Attorney for Florida Public Service
Commission

ATTACHMENT A

Companies:

Bellerud Communications, LLC
LifeConnex Telecom, LLC f/k/a Swiftel
Triarch Marketing, Inc.
American Dial Tone f/k/a Ganoco, Inc.
BLC Management, LLC d/b/a Angles Communications Solutions
All American Telecom, Inc.

1. Please provide the following customer information for each customer of the above listed companies in any Verizon state for the months of January 2010 through May 2010:
 - a) Customer Name
 - b) Customer Address
 - c) Customer Telephone Number
 - d) Date of Initiation of service
 - e) Date of termination of service
 - f) If the customer was moved to another company, list the company that the customer was moved to
 - g) Type of service or package customer is receiving

2. How many UNE/Wholesale Local Platform (WLP) lines has Ganoco/American Dial Tone purchased from Verizon in the state of Florida from Oct 2008 through April 2009?

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Docket No. 100340-TP Investigation)
of Associated Telecommunications)
Management Services, LLC (ATMS))
companies for compliance with Chapter 25-)
24, F.A.C., and applicable lifeline, eligible)
telecommunication carrier, and universal)
service requirements.)

SUBPOENA DUCES TECUM
WITHOUT DEPOSITION

THE STATE OF FLORIDA

TO: Greg Follensbee, BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast, 150 South Monroe Street, Suite 400, Tallahassee, FL 32301

YOU ARE COMMANDED to appear at 2540 Shumard Oak Boulevard, Tallahassee, FL 32399, on July 19, 2010, by 5:00 p.m., or at such other time and place as may be mutually agreed upon by counsel, and to have with you at that time and place the following:

The documents listed in Attachment A.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production.. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN.

YOU ARE SUBPOENAED by the following attorney to (1) appear as specified, or (2) furnish the records instead of appearing as provided above, and, unless excused from this subpoena by this attorney or the Commission, you shall respond to this subpoena as directed.

DATED June 30, 2010

Ann Cole, Commission Clerk
Office of Commission Clerk
Florida Public Service Commission

By: Dorothy Menasco
Dorothy Menasco
Chief Deputy Commission Clerk

(SEAL)

Adam Teitzman
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Attorney for Florida Public Service
Commission

ATTACHMENT A

Companies:

Bellerud Communications, LLC
LifeConnex Telecom, LLC f/k/a Swiftel
Triarch Marketing, Inc.
American Dial Tone f/k/a Ganoco, Inc.
BLC Management, LLC d/b/a Angles Communications Solutions
All American Telecom, Inc.

1. Please provide the following customer information for each customer of the above listed companies in any AT&T/BellSouth states for the months of January 2010 through May 2010:
 - a) Customer Name
 - b) Customer Address
 - c) Customer Telephone Number
 - d) Date of initiation of service
 - e) Date of termination of service
 - f) If the customer was moved to another company, list the company that the customer was moved to
 - g) Type of service or package customer is receiving

2. How many UNE/Wholesale Local Platform (WLP) lines has Ganoco/American Dial Tone purchased from AT&T in the state of Florida from Oct 2008 through April 2009?