



Public Service Commission

-M-E-M-O-R-A-N-D-U-M **RECEIVED**

DATE: December 11, 1997

DEC 11 1997

TO: BLANCA BAYO, DIRECTOR OF RECORDS AND REPORTING ¹²⁵⁵ PSC - Records/Reporting

FROM: DIANA CALDWELL, DIVISION OF APPEALS *DWC*

RE: DOCKET NO. 970882-TI

³
PSC-97-1563-PCO-TI

FILE NAME: OR970882.DWC

Attached is an order to be issued as soon as possible.

DWC
Attachment

cc: Wanda Terrell

See 2
Unlabel -

BEFORE THE FLORIDA PUBLIC SERVICE 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
ORDER NO. PSC-97-1563-PCO-TI
ISSUED: December 12, 1997

ORDER COMPELLING PRODUCTION OF DOCUMENTS

On July 15, 1997, the Citizens of Florida (Citizens) by and through the Office of Public Counsel (OPC) and the Attorney General (AG) filed a Joint Petition for Initiation of Formal Proceedings Pursuant to Section 120.57, Florida Statutes, to Investigate the Practice of "Slamming" and to Determine the Appropriate Remedial Measures. Slamming is the unauthorized switching of a customer's preferred telecommunications service provider. Meanwhile, Commission staff had initiated its process for rulemaking to amend current rules to reduce or eliminate slamming. Recognizing the urgency for more stringent rules relating to slamming and the need to obtain information as to the types and extent of slamming, the Commission combined the investigation with rulemaking in Docket No. 970882-TI.

As part of the investigative portion of the Docket, the OPC and AG requested discovery and a hearing that includes sworn testimony and cross-examination of witnesses. This request was granted by Order No. PSC-97-1071-PCO-TI issued September 12, 1997. This proceeding is contemplated to result in rulemaking. The scope of this docket is to determine the extent of slamming, the ways slamming occurs, and how customers can be protected from it, thus developing a basis to adopt rules that will eliminate, or at least greatly reduce, the occurrences of slamming.

On September 10, 1997, the OPC and AG jointly issued its First Set of Requests for Production of Documents to: BellSouth Telecommunications, Inc. (BellSouth), GTE Florida Inc. (GTEFL), Sprint-Florida, AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications Corp. (MCI), Alltel Florida, Inc.

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(Alltel, and Sprint Communications Company, Limited Partnership (Sprint). On September 11, 1997, the OPC and AG jointly issued its First Set of Requests for Production of Documents to: Network Utilization Services (Network), Intercontinental Communications Group, Inc. (ICLD), Brittan Communications Inc. (BCI), Business Discount Plan, Inc. (BDP), The Furst Group, Inc. (Furst Group), Discount Network Services, Inc. (DNS), Preferred Carrier Services, Inc. (PCS), Home Owners Long Distance, Inc. (Home Owners), Excel Telecommunications, Inc. (Excel), All American Telephone, Inc. (All American), Frontier Communications Services (Frontier), LCI International Telecom Corp. (LCI), Minimum Rate Pricing, Inc. (MRP), and LCD Telecommunications, Inc. (LCD).

The following companies filed objections: on September 22, 1997, BellSouth, AT&T, and MCI filed; on September 24, 1997, Sprint filed; on September 25, ICLD, Home Owners, Excel, All American, and LDC filed; on September 26, 1997, BCI and the Furst Group filed; on October 1, 1997, BDP filed; on October 3, 1997, LCI and Frontier filed; and on October 13, 1997, ITS each filed their Objections to the First Set of Requests for Production of Documents to which the OPC and AG filed timely Motions to Compel. On October 31, 1997 and on December 2, 1997, OPC and the AG filed respectively its notice of Withdrawal of its Motion to Compel against MRP and Home Owners.

Because the objections of each company raise similar arguments and issues, each issue will be addressed rather than the individual motions, responses, and objections.

AT&T, ICLD, Excel, LDC, ITS, BDP, and BCI each argued that this is a rulemaking proceeding and therefore, it is not a party to this proceeding under Section 120.54, Florida Statutes. Citizens' and the AG responded that at the agenda conference dealing with the joint petition, they "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 no disagreement was expressed by the Commission, staff, or any other party at agenda concerning this matter. The Commission has confirmed that any company with a certificate from the Commission is subject to discovery requests in this docket."

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Section 364.058, Florida Statutes, provides for limited proceedings. Subsection (1) states: "Upon petition or its own motion, the Commission may conduct a limited or expedited proceeding to consider any matter within its jurisdiction." Subsection (2) states: "The Commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters." Order No. PSC-97-1071-PCO-TI provides for combining the investigatory petition and the rulemaking proceeding. The discovery being conducted by OPC and the AG is part of the investigation portion of the docket to establish a factual record for rulemaking. In order to establish that record, discovery may be served on certificated companies. Upon consideration, I find that certificated companies that are under the jurisdiction of the Commission are required to respond to the production of documents requests to the extent outlined in this order.

Frontier, BDP, All American, Excel, and ICLD object to the Citizens' and AG's request for production of documents as being over broad, and that compliance is burdensome. However, these companies did not provide an analysis, examples or show a basis for their claim. Upon consideration, this objection is denied.

Frontier argued that the information requested related to matters beyond the subject matter jurisdiction of the Commission. It argues that Section 258(a) of the Federal Communications Act reserves to the Federal Communications Commission (FCC) the authority to prescribe regulations addressing changes in consumer's long distance and local carriers. Frontier argues that the Act reserves to state commissions only the authority to enforce the FCC's regulations.

In addition, BCI, BDP, Sprint, LDC, and AT&T argue that the request seeks information beyond the jurisdiction of the Commission which is limited to intrastate telecommunications.

The investigation and rulemaking proceeding in this docket relate only to the slamming problems that arise during the provision of intrastate telecommunications service. 47 U.S.C. 258(a) provides in part:

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. . . Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.

I find that this provision does not preempt states from promulgating and enforcing its own rules on slamming. These objections are denied.

BCI, BDP, ITS, Sprint, LDC, and AT&T argue that the use of "you" and "your" is over broad and needs clarifying. OPC and the AG responded that these terms are intended to include documents from persons or entities where the companies are perceived to be "acting as one" or where one company is acting on behalf of another. I find that this limitation appears to sufficiently restrict the scope of the request to one that is not burdensome to the companies. Upon consideration, documents related to the scope of this proceeding in the possession or control of a company or a company acting on its behalf are subject to discovery.

BCI, BDP, ITS, Sprint, LDC, and AT&T argue that certain information sought is privileged and other information is trade secret, the disclosure of which would cause irreparable harm. Information that is "trade secret" or "confidential proprietary business information" is protected under Section 364.183, Florida Statutes. Such information may be claimed as confidential and given confidential treatment under Rule 25-22.006(5), Florida Administrative Code. Information that is attorney-client or attorney work product is also protected. However, to receive the appropriate protections, the documents must be specified and the appropriate claim must be made. I find that until such objections are made more specific, the objection is denied.

BCI, BDP, ITS, Sprint, LDC and AT&T argue that the requests are vague, ambiguous, voluminous, overly broad, imprecise or utilize terms that are subject to multiple interpretations. However, their objections failed to cite specific examples or specify where the requests fall within their objection. Without specific examples, the objections are denied.

BCI, BDP, ITS, LDC, Excel, ICLD, and AT&T argue that the request is not reasonably calculated to lead to the discovery of admissible evidence. They do not cite examples or specify how this

objection applies to this proceeding. Upon consideration, the objections are denied.

BCI, BDP, ITS, Sprint, LDC, and AT&T argue that the obligations to provide the requested documents exceed the requirements of the Florida Rules of Civil Procedure. These companies do not cite examples or specify how the requirements of the Rules are exceeded. Without more, I find the objections are denied.

BCI, BDP, ITS, LDC and AT&T argue that some of the information is already available as a public record from the Commission. However, they cite no exemption from the discovery rule for public record information. Upon consideration, the objections are denied.

BCI, ITS, LDC, and AT&T argue that each request is unduly burdensome, expensive, oppressive, or excessively time consuming to produce. Again, there are no examples or specifics cited as to how the requests are unduly burdensome. I find the objections are denied.

BDP argues that the term "document" is beyond the scope of the rulemaking proceeding and is not relevant to the subject matter. However, BDP does not give any explanation example or analysis as to why its specific claim is a valid objection. I find that the objection is therefore denied.

Finally, AT&T and BDP argue that they are prohibited from disclosing the names and addresses of customers under Section 364.24, Florida Statutes. Section 364.24(2), Florida Statutes, provides in part:

Any officer or person in the employ of any telecommunications company shall not intentionally disclose customer account records except as authorized by the customer or as necessary for billing purposes, or required by subpoena, court order, other process of court, or as otherwise allowed by law.

This Commission recognizes the important public interest in protecting customers from the illegal practice of slamming. Part

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of this rulemaking proceeding is an investigation that explores all the different ways that slamming occurs and how many customers of the telecommunications companies are affected. To further understand the slamming problem, it is important that the Office of the Public Counsel, the Attorney General, and this Commission have access to the names and addresses of customers that have been slammed. Under Section 364.183(1), Florida Statutes, companies may file a request for confidentiality to protect the information from public disclosure in keeping with the intent of Section 364.24(2), Florida Statutes. As an alternative, companies, the OPC, and the AG may agree that the information may be provided in an aggregate form that satisfies the needs of OPC and the AG while still protecting the customer information. Upon consideration, BDP's and AT&T's objections are denied.

It is therefore,

ORDERED by the Florida Public Service Commission that companies who received the First Set of Requests for Production of Documents by the Attorney General and the Citizens of the State of Florida to produce those documents that comply with this Order within 14 days of its issuance. It is further

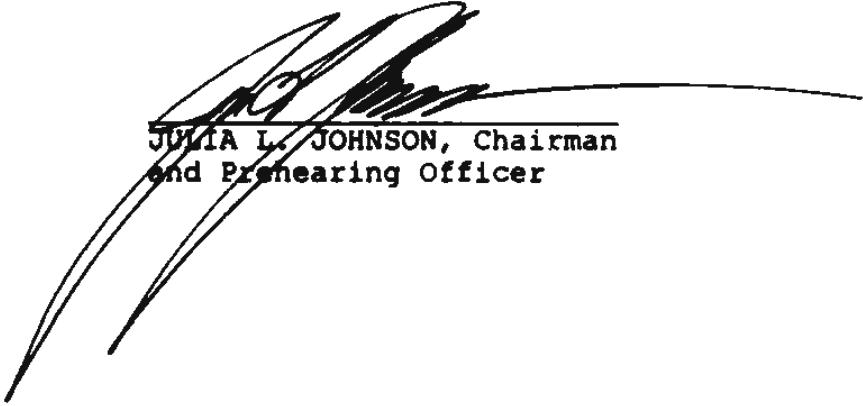
ORDERED that certificated companies served a request for production of documents must comply to the extent outlined in this Order. It is further

ORDERED that 47 U.S.C. §258(a) does not preempt states from promulgating and enforcing its own rules on slamming. It is further

ORDERED that companies provide the names and addresses of customers as requested. Companies may claim such information confidential under Section 364.183, Florida Statutes.

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By ORDER of Commissioner Julia L. Johnson, as Prehearing Officer, this 12th day of December 1997.



JULIA L. JOHNSON, Chairman
and Prehearing Officer

(S E A L)

DWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of

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Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.