

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Communications Authority, Inc. for arbitration of Section 252(b) interconnection agreement with BellSouth Telecommunications, LLC d/b/a AT&T Florida.

DOCKET NO. 140156-TP  
ORDER NO. PSC-15-0175-PCO-TP  
ISSUED: May 6, 2015

ORDER DECLINING RECUSAL OF COMMISSIONER JIMMY PATRONIS

On May 4, 2015, Communications Authority, Inc. (Communications Authority) filed a Motion to Disqualify and Recuse, requesting that I disqualify myself from this proceeding on grounds of potential bias. It is my task to review this motion for legal sufficiency. *See Bay Bank & Trust Co. v. Lewis*, 634 So. 2d 672, 678 (Fla. 1st DCA 1994) (determining that the agency head must assume all allegations of fact in the motion to be true in determining whether the motion alleges specific facts relied on to objectively establish a sufficient ground for fear of bias or prejudice).

Section 120.665, F.S., governs disqualification of agency personnel, and states, in pertinent part, that “an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding.”

As a threshold matter, I note that it does not appear that Communications Authority filed its motion within a reasonable time prior to the hearing. The hearing in this case is scheduled to begin on Wednesday, May 6, 2015, only two days after the filing of the motion. I am unpersuaded by Communications Authority’s statement that it filed the motion as soon as was possible given the release date of the appointments to the hearing panel. The hearing was first noticed in the Florida Administrative Register on April 10, 2015, and a second hearing notice was published on April 13, 2015, correcting the start date of the hearing. Communications Authority knew or should have known that as a Public Service Commissioner, there was a reasonable likelihood that I would hear this case, either as a member of the full Commission or as a member of a hearing panel.

Further, I find the motion to be legally insufficient. Just cause for disqualification may be demonstrated when “the facts alleged would prompt a reasonably prudent person to fear that they will not obtain a fair and impartial hearing.” *Charlotte County v. IMC-Phosphates Co.*, 824 So. 2d 298, 300 (Fla. 1st DCA 2002). “It is not a question of how the [agency head] actually feels, but what feeling resides in the movant’s mind and the basis for such feeling. The [agency head] may not pass on the truth of the allegations of fact, and countervailing evidence is not admissible.” *Id.* (citation omitted).

Communications Authority states that it fears my “objectivity for this case will be compromised” because I received campaign funds from AT&T on seven different occasions

totaling \$3500, which assisted me in reaching elective office in the Florida House of Representatives from 2006 to 2014 in four elections. In support of its motion, Communications Authority cites to section 350.041(2)(h), F.S., which states that “[a] commissioner must avoid impropriety in all of his or her activities and must act in a manner that promotes public confidence in the integrity and impartiality of the [C]ommission.”

In *Mackenzie v. Super Kids Bargain Store*, 565 So. 2d 1332, 1335 (Fla. 1990), the Florida Supreme Court held that an allegation that a litigant made a legal campaign contribution to the political campaign of a trial judge, without more, is not a legally sufficient ground for disqualification. In so holding, the Court found that “Florida’s Code of Judicial Conduct together with Florida’s statutory limitation upon campaign contributions and the requisite public disclosure of such contributions,” provide adequate safeguards against concerns of bias in favor of the contributing litigant based solely on the fact that a contribution was made.<sup>1</sup> *Id.* at 1336; *see also Bay Bank*, 634 So. 2d at 676 (acknowledging that campaign contribution activity alone is not a sufficient basis for disqualification). Accordingly, Communications Authority’s allegation that I received campaign contributions from AT&T for legislative office is not, in and of itself, a legally sufficient basis for my disqualification.

Although I am not bound by Florida’s Code of Judicial Conduct because I am not a member of the judiciary, I am bound by the standards of conduct for Commissioners of the Public Service Commission contained in section 350.041, F.S. Among other things, section 350.041(2)(a), F.S., prohibits me from accepting anything from any Commission-regulated public utility. Communications Authority has not alleged that I have received any campaign or other contributions from AT&T during my tenure as Commissioner of the Florida Public Service Commission.

Communications Authority further states that should I seek political office again, it is reasonable to assume that I would seek donations from my prior contributors, including AT&T. This allegation is legally insufficient under section 120.665, F.S., as it is tenuous and speculative. Pursuant to *Bay Bank*, 634 So. 2d at 678, the movant must “allege specific facts relied on to objectively establish a sufficient ground for fear of such bias and prejudice.” The grounds for disqualifying an agency head are not legally sufficient if they are tenuous and speculative. *Id.* *See also Optiplan, Inc. v. School Board*, 710 So. 2d 569 (Fla. 4th DCA 1998) (finding that a motion suggesting that school board members might have talked to other school board members and might have influenced them falls short of the facts necessary for disqualification).

Communications Authority also alleges as grounds for my disqualification that I have served, and that I may presently serve, as the Florida State Chairman of the American Legislative Exchange Council (ALEC), which created model state legislation for the purpose of limiting or entirely erasing state utility commission regulation over telecommunications, that I was the Florida State Chairman of ALEC in 2011 when the Florida Legislature passed the “Regulatory Reform Act,” which was based on ALEC model legislation, that AT&T is a corporate board

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<sup>1</sup> The statutory limitations upon campaign contributions contained in section 106.08(1), F.S., as well as the requisite public disclosure of such contributions contained in section 106.07, F.S., apply to candidates for any election, including candidates for legislative office.

member of ALEC, that AT&T contributed \$100,000 to ALEC in order to become an ALEC “president level sponsor,” and that I stated that I value the conservative group because it allows me to share good ideas with other lawmakers from Southern states.

Communications Authority states that the Commission’s last remaining bit of regulatory oversight of the telecommunications industry includes carrier to carrier disputes such as the arbitration at issue in this docket, and that my activities on ALEC’s behalf suggest an aversion to Commission regulation of telecommunications. Communications Authority argues that this qualifies as an “adverse posture” consistent with *World Transportation, Inc. v. Central Florida Regional Transportation*, 641 So. 2d 913 (Fla. 5th DCA 1994), which will prevent me from fairly adjudicating the issues raised in this docket. I find *World Transportation, Inc.* to be inapplicable to the question of whether I should recuse myself from this proceeding. In *World Transportation, Inc.*, the hearing officer refused to recuse herself from presiding over a formal administrative proceeding before two transportation boards that approved a federally funded bus service in Orlando, which approval the petitioner claimed would adversely impact its business operations. *Id.* at 914. The hearing officer was a member of both boards, and had made various statements that objectively demonstrated bias and prejudice against the petitioner. *Id.* In view of the adverse posture of the petitioner and the two boards, the Court strongly recommended that the boards request an independent hearing officer, and that selection of another board member would not be appropriate. *Id.*

In contrast to *World Transportation, Inc.*, Communications Authority’s motion is legally insufficient because it does not allege that I am adverse to its position in this case and contains no showing that I am to preside over a matter that I acted upon in my role as Florida State Chairman of ALEC. Communications Authority merely alleges a potential perception of bias by virtue of my serving, or having served, as the Florida State Chairman of ALEC. I find these allegations to be legally insufficient under section 120.665, F.S., as they are too tenuous and speculative. *See Bay Bank*, 634 So. 2d at 678.

I decline to recuse myself from this proceeding because the motion fails to allege specific facts relied on to objectively establish a sufficient ground for fear of bias or prejudice.

By ORDER of Commissioner Jimmy Patronis, this 6th day  
of May, 2015.



JIMMY PATRONIS  
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

JP

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 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. 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.