

ORIGINAL

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. 970003-TI

FILED: 5/26/97

NONPARTY NOTICE OF GENERAL OBJECTION

LDC Telecommunications, Inc. by its undersigned attorney, hereby serves Notice of General Objection to First Set of Requests for Production of Documents by the Attorney General and the Citizens to LDC. The grounds for this objection are as follows:

**GENERAL OBJECTIONS: PART I**

The Attorney General and the Office of the Public Counsel (hereafter "Attorney General/OPC") served the production requests pursuant to Rules 25-22.34 and 25-22.35 Florida Administrative Code and Rule 1.350, Florida Rules of Civil Procedure.

ACK \_\_\_\_\_  
AFA \_\_\_\_\_  
APP 1 Discovery through production requests may be made by a party pursuant to Rule 1.350, Florida Rules of Civil Procedure, which states in pertinent part as follows:  
CAF \_\_\_\_\_

CM! \_\_\_\_\_  
CTR \_\_\_\_\_ Any party may request any other party (1) to produce . . . documents . . . .

EAG \_\_\_\_\_  
LEG 1 There is no provision under Commission rules or under the Rules of Civil Procedure that allows either a party or non-party to discover documents of a non-party through productions requests.  
LIN 5 \_\_\_\_\_  
OPC \_\_\_\_\_  
RCH \_\_\_\_\_

SEC 1 Based on Order PSC-97-1071-PCO-TI, neither LDC nor the

WAS \_\_\_\_\_  
OTH \_\_\_\_\_

RECEIVED & FILED  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
~~09980~~ SEP 26 5  
FPSC-RECORDS/REPORTING

Attorney General/OPC is a party within the meaning of the rules of civil procedure. Focusing on LDC's status exclusively, LDC has not attempted to intervene in this proceeding. Indeed, if LDC had attempted to intervene and the Commission followed past practice, such intervention would have been denied on the ground that party status is inappropriate for rule proceedings, which are legislative in nature. In addition, nothing in that order attempts to confer party status on any entity.

Order No. PSC-97-1071-PCO-TI denies the Attorney General/OPC's drawout request, which would have converted the proceeding from legislative to adjudicative. Nevertheless, the Order states that ". . . the rulemaking hearing is modified to include discovery and prefiled testimony." Assuming for a moment that the Commission can create a right of discovery in a rule proceeding in this manner, such discovery remains pursuant to the rules of civil procedure and available only to parties against one another.

Moreover, the Commission cites no authority for the proposition that it can create its own process for rulemaking by picking and choosing among formal procedures employed in a drawout pursuant to Section 120.54(3)(c)2. The Legislature has delegated authority to the Commission to enact rules within certain parameters; it is not clear that the Commission may "unbundle" that delegation to suit its momentary purposes.

To summarize, because LDC is a nonparty to this proceeding no participant in this proceeding may seek discovery of information by serving production requests on LDC as if it were a party. Because

LDC is not a party in this proceeding, it is not obligated to respond to the production requests of the Attorney General/OPC.

This general objection notwithstanding, LDC will respond to the specific requests as a nonparty. By so responding, LDC does not waive but rather specifically reserves objections that it might otherwise make in response to the First Set of Requests for Production of Documents by the Attorney General/OPC; moreover, in responding to these production requests as a non-party LDC does not waive but rather reserves its right to object to future discovery that might be served on LDC in this docket. With these caveats and reservations noted, LDC intends to respond in good faith in the time period that would be applicable if it were a party.

#### **GENERAL OBJECTIONS: PART II**

LDC makes the following General Objections to Attorney General/OPC's First Set of Requests for Production of Documents which will be incorporated by reference into LDC's specific response when its responses are served on Attorney General/OPC.

1. LDC objects to the production request to the extent that such production requests seek to impose an obligation on LDC to respond on behalf of subsidiaries, affiliates, or other persons that are not parties to this case on the grounds that such requests are overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

2. LDC has interpreted Attorney General/OPC's production requests to apply to LDC's regulated intrastate operations in Florida and will limit its responses accordingly. To the extent

that any production request is intended to apply to matters other than Florida intrastate operations subject to the jurisdiction of the Commission, LDC objects to such production request as irrelevant, overly broad, unduly burdensome, and oppressive.

3. LDC objects to each and every production request and instruction to the extent that such production request or instruction calls for information which is exempt from discovery by virtue of the attorney-client privilege, work product privilege, or other applicable privilege.

4. LDC objects to each and every production request insofar as the request is vague, ambiguous, overly broad, imprecise, or utilizes terms that are subject to multiple interpretation but are not properly defined or explained for purposes of these production requests. Any documents provided by LDC in response to Attorney General/OPC's production requests will be provided subject to, and without waiver of, the foregoing objection.

5. LDC objects to each and every production request insofar as the request is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this action. LDC will attempt to note each instance where this objection applies.

6. LDC objects to Attorney General/OPC's discovery requests insofar as they seek to impose obligations on LDC which exceed the requirements of the Florida Rules of Civil Procedure or Florida law.

7. LDC objects to providing information to the extent that

such information is already in the public record before the Florida Public Service Commission.

8. LDC objects to each and every production request, insofar as it calls for a response which is unduly burdensome, expensive, oppressive, or excessively time consuming as written to prepare.

9. LDC objects to each and every production request to the extent that the information requested constitutes "trade secrets" which are privileged pursuant to Section 90.506, Florida Statutes. To the extent that Attorney General/OPC's production requests request proprietary confidential business information which is not subject to the "trade secrets" privilege, LDC will make such information available to counsel for Attorney General/OPC pursuant to an appropriate Protective Agreement, subject to any other general or specific objections contained herein.

Respectfully submitted, this 26th day of September 1997.

LDC Telecommunications Inc.



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Its Attorneys

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand-Delivery this day of September 26, 1997, to the following:

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Donna L. Canzano