

ORIGINAL



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**STATE OF FLORIDA
OFFICE OF THE PUBLIC COUNSEL**

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September 30, 1997

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. ~~970000-74~~

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the First Motion to Compel Against Excel Telecommunications, Inc. by the Attorney General and the Citizens of Florida.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

ACK _____

AFA _____

ADD _____

CAC _____

CJB

Sincerely,

Charles J. Beck
Deputy Public Counsel

1-FYI
5 CJB:bs

Enclosures

RECEIVED & FILED

OFFICE OF THE PUBLIC COUNSEL

DOCUMENT NUMBER-DATE

10020 SEP 30 5

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICES 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-T1

Filed: September 30, 1997

**FIRST MOTION TO COMPEL
AGAINST EXCEL TELECOMMUNICATIONS, INC.
BY THE ATTORNEY GENERAL AND THE CITIZENS OF FLORIDA**

Robert A. Butterworth, Attorney General ("Attorney General") and the Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the Florida Public Service Commission to enter an order requiring Excel Telecommunications, Inc. ("Excel") to produce each of the documents requested in the First Set of Requests for Production of Documents by the Attorney General and the Citizens. In support of this motion, the Attorney General and the Citizens submit the following:

1. The Attorney General and the Citizens filed their first set of requests for production of document to Excel on September 11, 1997. Excel filed its objections on September 25, 1997. The objections contained both a general objection to all discovery, as well as specific objections to the various requests for documents.

2. In its general objection, Excel objects to responding to any discovery request in this docket because it is not a party. This matter has already been presented to the Commission at the agenda conference where the Commission decided to merge the Commission's undocketed rule proceeding with the joint petition by the Attorney General and the Citizens for an investigation into slamming. At that agenda conference the Attorney General and the Citizens specifically asked for clarification that all telecommunications companies holding a certificate from the Commission would be subject to discovery in this docket. The staff agreed with this interpretation, and the Commission questioned staff about it. There was no disagreement by the Commission or by any other entity appearing before the Commission at agenda conference. Had the Commission not decided to allow discovery to all telephone companies in this docket, the Attorney General and the Citizens would have never agreed to proceeding as proposed by staff. Since this matter has already been addressed by the Commission, the objection by Excel should be denied.

3. Excel objects to Request No. 1 on the grounds it is overly broad, unduly burdensome, and seeks disclosure of information not relevant nor likely to lead to the discovery of admissible evidence. It also objects to the extent it seeks privileged information. Excel provides absolutely no example or instance showing where the request is overly broad, unduly burdensome, or seeks information not relevant nor likely to lead to discovery of admissible evidence. Nor does it show any instance where its documents would be privileged. Since Excel was unable to provide even one instance or example

showing how the request was overly broad, unduly burdensome, or sought documents not relevant nor likely to lead to the discovery of admissible evidence, the objection should be denied. With respect to its claim of privilege, Excel must identify the document or documents it claims to be privileged, and at that point the Attorney General and the Citizens will decide whether to seek an *in camera* inspection of the documents to determine the validity or extent of the privilege.

4. Excel likewise makes specific objections to Requests Nos. 2 thru 13 on identical grounds. In no instance whatsoever has Excel made any attempt to provide a specific example how its objection would apply to the discovery request, nor does it provide any analysis showing why the objection would apply to the request. These are simply boilerplate objections filed by Excel without giving any specific reason for the objection. Since Excel has been unable to provide any specific reason, example or analysis for its objection, it should be denied.

5. The documents requested by the Attorney General's and Citizens' First Request for Production of Documents to Excel are due to be produced on or before October 16, 1997. Accordingly, the Attorney General and the Citizens request the Commission to make a ruling prior to that date requiring Excel to provide all of the requested documents.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General

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CERTIFICATE OF SERVICE

Docket No. 970882-TL

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 30th day of September, 1997.

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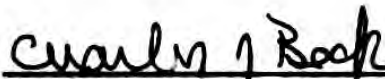
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