

ORIGINAL



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March 13, 1998

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

Re: Case No. 970109-TI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are 15 copies of the Rebuttal Testimony of R. Earl Poucher.

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

Sincerely,

Charles J. Beck
Deputy Public Counsel

ACK _____
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FPSC - RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application to Provide)
Interexchange Telecommunications)
Service by KTNT Communications,)
Inc., d/b/a I Don't Care and d/b/a)
It Doesn't Matter)
_____)

Docket 970109-TI

Filed: March 13, 1998

REBUTTAL TESTIMONY

OF

R. EARL POUCHER

On Behalf of

The Office of the Attorney General

and

The Citizens of Florida

DOCUMENT NUMBER - DATE

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FPSC-RECORDS/REPORTING

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2
3 **REBUTTAL TESTIMONY OF R. EARL POUCHER**

4
5 **DOCKET NO. 970109-TL**

6
7
8 **Q. Please state your name, address, and position.**

9 **A. My name is R. Earl Poucher, and my business address is 111 West**
10 **Madison St., Room 812, Tallahassee, Florida 32399-1400. I am a**
11 **legislative analyst with the Office of Public Counsel.**

12
13 **Q. Please state your business experience.**

14 **A. I graduated from the University of Florida in 1956 and I was employed by**
15 **Southern Bell in July 1956. I retired in 1987 with 29 years of service.**
16 **During my career with Southern Bell, I held a wide variety of management**
17 **positions in the areas of forecasting, business office operations, rate and**
18 **tariffs, marketing and outside plant operations. My business office**
19 **experiences include the following job titles: Service Representative-**
20 **Jacksonville, Supervisor-Orlando, Office Manager-Melbourne, Unit**
21 **Manager-Orlando, District Manager-Downtown Atlanta and General**
22 **Commercial Supervisor--Atlanta Area. The last named position included**
23 **direct supervision of the Atlanta Area business office and marketing staff**
24 **organizations for Southern Bell in Georgia. I joined the Office of Public**
25 **Counsel in October 1991.**

1 Q. **Have you ever appeared before this Commission?**

2 A. Yes I have. I have testified on behalf of Public Counsel on numerous
3 occasions before this Commission in various telephone and depreciation
4 dockets over the past six years. In addition, as an employee of Southern
5 Bell I testified in rate case and anti-trust dockets before the Public Service
6 Commissions in Georgia and North Carolina.

7

8 Q. **On who's behalf are you providing this testimony**

9 A. I am providing this testimony on behalf of the Office of Attorney General
10 ("AG") and the Citizens of Florida ("Citizens" or "OPC").

11

12 Q. **What is the purpose of your testimony?**

13 A. The purpose of my testimony is to rebut the testimony of KTNT witness
14 Dennis Dees. After review of the testimony offered by Mr. Dees, who is
15 the CEO of KTNT, it is obvious that the company's basic marketing plan
16 hinges upon exploiting customers. I believe that management motives of
17 the company are directed primarily at deceiving the public and that a
18 company that intentionally engages in deceptive trade practices ought not
19 to be allowed to operate in the State of Florida.

20

21 Q. **Please describe the products and services offered by the company.**

22 A. The company's primary product is the offering of operator transfer
23 service. Operator transfer service is provided in Florida by approximately
24 fifteen companies who offer operator services to those customers who
25 dial "0" and request an operator-handled toll call via the local operator of

1 the serving local exchange company. Mr. Dees maintains in his testimony
2 that the company intends to offer other long distance services in Florida,
3 such as 800 service and 1+ dialing. However, based on his responses to
4 questions asked in his deposition, the overwhelming percentage of
5 revenues currently received by the company are generated from
6 customers who have responded to deceptive trade names when asked to
7 choose a long distance operator services company for the completion of
8 an operator handled call. Thus, the current track record of the company
9 depends almost solely upon revenues that are generated from an
10 accidental and unintended choice of language by customers who are
11 attempting to place long distance calls by dialing "0".

12
13 **Q. Is there any problem with the use of the name KTNT?**

14 **A.** Yes, there is. Witness Dees states that customers aren't aware of the
15 name KTNT except upon receipt of their telephone bill and therefore
16 customers don't think they heard AT&T when the name of the company is
17 actually KTNT. In other words, if the words aren't spoken, then there is
18 no confusion. Under current operations that deal exclusively with
19 operator transfer services the company will use the names "I Don't Care"
20 and "It Doesn't Matter" to trick customers into an unintended choice, and it
21 will then bill in the name of KTNT.

22
23 In addition, the company has stated it has ambitions to enter the long
24 distance market as a primary provider of full IXC services. How long will it
25 be before the company is masquerading as AT&T in the solicitation of

1 long distance subscribers? Of course, the company will probably take the
2 position that it's just an accident, not intentional, that customers would be
3 confused by the use of KTNT -- a name that sounds suspiciously like
4 AT&T, the largest and most successful trade name in the long distance
5 market.

6
7 **Q. Isn't the public interest be served by creating greater competition in**
8 **the reselling of intrastate communications services?**

9 A. Yes. The public interest is, indeed, best served by encouraging
10 competition. However, the primary means for KTNT to gain its "market
11 share" is not through customers exercising competitive choices, but by
12 accident and deception.

13
14 **Q. Why do customers choose to use KTNT by accident, not by choice?**

15 A. KTNT's chosen operating names for Florida are "I Don't Care" and "It
16 Doesn't Matter." These names are registered with the local exchange
17 carrier such as BellSouth in order for the company to share in default
18 operator services traffic that is generated through "0" dialing. The
19 process has been described in the past as "0-" (zero minus) traffic
20 because the customer dials only "0" and no other digits. Such calls are
21 routed to the local exchange operator. When it is determined that a
22 customer wants to make a collect, person to person, third party, or calling
23 card call, the local exchange operator then offers to connect the customer
24 to the operator services company of choice and asks the customer for the
25 name of the company. If the customer says "I don't care" or "It doesn't

1 matter," the call goes to KTNT, despite the fact that the customer may
2 never have heard of KTNT, "I Don't Care," or "It Doesn't Matter."
3

4 **Q. Does the company's presence in the operator transfer business**
5 **serve to increase customer choice?**

6 A. To the contrary, by selecting company names that are phrases normally
7 used by customers to convey the thought that the customer has no
8 choice, the company is actually pursuing an anti-competitive strategy that
9 would serve to limit customer choice.
10

11 **Q. Why would such a practice be anti-competitive?**

12 A. There are approximately fifteen competitive operator service providers in
13 Florida who are registered with BellSouth to provide operator transfer
14 services. When the customer has no choice, the traffic is evenly
15 distributed to each of the providers on an alternating basis. By use of the
16 names "I Don't Care" and "It Doesn't Matter," KTNT will be foreclosing
17 each of the other fifteen companies from achieving their equal share of
18 the available market. KTNT's market approach will insert itself ahead of
19 the existing fifteen company so that all participants will not receive an
20 equal share of the default traffic. More importantly, however, is the fact
21 that customers will wind up being served by an operator services
22 company that operates solely on the premise of being selected not based
23 upon merit but on the basis of accidental use of deceptive company
24 names. This is hardly the kind of competition that one would hold out as
25 being good for customers or fair for other providers. If the Commission

1 grants approval for the use of the two names proposed by KTNT, there
2 will be no basis in the future to preclude the use of other deception
3 names.

4
5 **Q. Has the Commission shown concern in the past regarding the use of**
6 **deceptive marketing practices by telephone companies?**

7 **A.** The Commission has shown keen interest in the past to insure that
8 telephone customers are provided clear and specific information to assist
9 customers in making informed judgements in the selection of
10 telecommunications services. For instance, the existing Commission
11 rules require local exchange companies to inform customers of the least
12 costly options available for the provision of basic telephone service.
13 Likewise, companies are required to make customers aware of lifeline
14 options, and to advise customers of available choices for long distance
15 providers. In 1993, the Commission conducted an extensive audit of
16 BellSouth's marketing practices to assure itself that the company's service
17 representatives were adequately informing the public of the optional
18 nature of services offered. BellSouth's current sales plan represents an
19 aggressive approach to eliminate customer deception in the sales
20 process. This plan is a direct result of the Commission's investigation of
21 BellSouth's sales practices and the agreement reached between the
22 company and the Office of the Attorney General. In short, the
23 Commission, in the past, has stood solidly against practices and
24 procedures by telecommunications companies that would serve to
25 deceive and confuse customers.

1 Q. **KTNT's witness has testified that it chooses not to market its**
2 **services through telemarketing tactics, which customers are tired of.**
3 **Doesn't this bode well for the customers who don't like**
4 **telemarketing?**

5 A. The only actual data this Commission can draw conclusions from
6 regarding the likely future operations of the company is available by
7 looking at its operations in other states. Witness Dees states their
8 revenues are presently around \$1 million annually and that the company
9 has spent "several hundred" dollars on advertising. It is fair to conclude
10 that the company has no realistic marketing plan to promote its product
11 other than to position itself in a spot where it can gain business through
12 deception alone, without the necessity of marketing, sales or promotion.

13
14 Q. **But certainly the use of simply two company names such as "I Don't**
15 **Care" and "It Doesn't Matter" does not preclude use of other**
16 **responses by customers to indicate to the local exchange company**
17 **that they have no particular choice of companies to handle operator**
18 **services calls, does it?**

19 A. No it does not. For example, customers might say "No," "I don't know,"
20 "Nope," "Not particularly," "It don't matter," "Not that I know of," "Whatever
21 you think," "Anybody," "Anyone," "Whatever you say," or any number of
22 other phrases to convey the thought that they have no choice. KTNT
23 provides operator services in Texas through the use of 46 different names
24 that generally appear to be aimed at short-circuiting the process of
25 providing operator transfer services to customers in that state.

1 KTNT (which sounds like AT&T) has devised a marketing plan which is a
2 sham. Customers end up being served by the company primarily by
3 deception and use of a company name that tricks the customer into a
4 choice of providers that was not intended by the customer. The
5 management of the company talks about the need for creativity, the need
6 for a clever approach, and the need for a sense of humor in the long
7 distance marketplace. The bottom line is that it's not funny when
8 customers are deceived and the Commission should not reward the
9 management of such a company with a certificate to abuse Florida
10 customers in the name of competition.

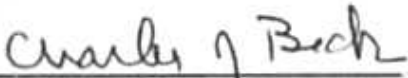
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12 **Q. Does that conclude your testimony?**

13 **A. Yes it does.**

**DOCKET NO. 970109-TI
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the Rebuttal Testimony of R. Earl Poucher has been furnished by U.S. Mail or hand-delivery to the following parties on this 13th day of March, 1998.


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