

American Phone Corporation

244 Shopping Avenue - Suite 166
Sarasota, Florida 34237
(941) 342-9285 Fax (941) 924-5537

December 12, 1998

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

Re: Docket Number 981016

Dear Ms. Bayo;

Attached are American Phone Corporation's Motion to Dismiss and Motion to Expedite with respect to the protest filed by Utilicore Corporation. We are requesting that these motions receive as high a priority as possible since American Phone Corporation is currently unable to do business until these matters are resolved.

Sincerely,



Thomas M. Beard

- ACK _____
- AFA 1
- APP _____
- CAF _____
- CMH Lester
- CTR _____
- EAG _____
- LEG 1
- LIN _____
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

DOCUMENT NUMBER-DATE
13825 DEC-8 8
FPCD-RECORDS/REPORTING

MOTION TO EXPEDITE AND RULE FROM THE BENCH

American Phone Corporation (APC), filed for status to provide telecommunications services as both an Alternate Local Exchange Carrier (ALEC) and as an inter-exchange carrier (IXC). On October 27, 1998, The Florida Public Service Commission (FPSC) issued an order granting such authority, subject to the provisions associated with a Proposed Agency Action (PAA). On November 17, 1998, Utilicore Corporation (Utilicore) filed a protest of that order. That filing is the subject of American Phone Corporation's Motion to Dismiss.

American Phone Corporation is currently prevented from providing any telecommunications services by that protest, until such time as the FPSC rules on APC's Motion to Dismiss and on Utilicore's protest. The actions by Utilicore are in direct conflict with the clear intent of the Telecommunications Act of 1996 and of Florida Statutes 364. Furthermore, Utilicore has already acknowledged that it knows that it has civil recourse to its alleged grievances, having filed in civil court in Miami-Dade County. Additionally, Utilicore continues to show that it will try and create obfuscation of the issues through improper choice of venue (See attached order). There is little question that APC risks suffering substantial damages through the frivolous actions of Utilicore. However, we understand the proper venue for redress of said damages and are addressing those matters in the proper fashion.

American Phone Corporation hereby requests that the FPSC expedite these matters to minimize the damage that APC will suffer. Furthermore, APC requests that the FPSC rule from the bench as time is of the essence in insuring APC's ability to survive and function on a going forward basis.



THOMAS M. BEARD

MOTION TO DISMISS

Pursuant to Rule 28-106.201 Utilicore Corporation filed a protest to American Phone Corporation's petition for authority to provide service as an Alternate Local Exchange Company in the State of Florida in Docket Number 981016.

Pursuant to those same rules, American Phone Corporation moves to dismiss on the following grounds:

1. Rule 28-106.201(2) (b) – The petitioner fails to explain how the petitioner's substantial interests will be affected except to attach motions that said petitioner has filed in civil court in Miami-Dade County. Petitioner has failed to state any cause of action that is under the jurisdiction of the Florida Public Service Commission. In fact, the petitioner's filing does just the opposite. The filing clearly indicates that the petitioner knows the proper jurisdiction to address any alleged grievances and in essence admits American Phone Corporation's qualifications and ability to provide service.
2. Rule 28-106.201 (2) (d) – The petitioner fails to provide a statement of the disputed issues that are under the jurisdiction of the Florida Public Service Commission. In fact, the petitioner's sole purpose is to thwart the clear language and intent of the Telecommunications Act of 1996 and Florida Statute 364, both of which clearly state that their intent is to foster competition and not to effect the abuse of process to avoid the same.
3. Rule 28-106.201 (2) (e) – The petitioner fails to allege any facts that warrant the reversal or modification of the agency's proposed action.
4. Rule 28-106.201 (2) (f) – The petitioner fails to specify any rules or statutes that would require the FPSC to reverse its decision.
5. Rule 28-106.201 (2) (g) – The petitioner fails to state the relief sought from the FPSC.

6. Rule 28-106.201 (4) – This petition should be dismissed because it is not in substantial compliance with subsection (2) of Rule 28-106.201. Furthermore, it should be dismissed with prejudice since a proper protest was not filed in a timely manner and because the protest is obviously an thinly veiled attempt to thwart competition and violate the Telecommunications Act of 1996.

A handwritten signature in black ink, appearing to read 'T. M. Beard', is written over a horizontal line.

THOMAS M. BEARD

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR DADE
COUNTY, FLORIDA

DIVISION: *General Jurisdiction*
CASE NO.: *98-86152*

Utilicore Corporation,
Delaware Corp.

Plaintiff(s)

David Bedwarsh,
Thomas Beard,
American Phone Corporation

vs.

Defendant(s)

FINAL ORDER AS TO ALL PARTIES

~~ORDER DENYING/GRANTING
PLAINTIFF'S/DEFENDANT'S~~

~~MOTION TO TRANSFER
VENUE TO
SARASOTA COUNTY~~

THIS CAUSE having come on to be heard on December 4th, 1998

on Plaintiff's/Defendant's Motion

to abate for improper venue

and the Court having heard argument of counsel, and being otherwise advised in the Premises, it is hereupon,

ORDERED AND ADJUDGED that said Motion be, and the same is hereby

GRANTED. CASE IS TRANSFERRED TO

SARASOTA COUNTY. PLAINTIFF HAS 30

DAYS TO FILE NOTICE OF APPEAL.

TRANSFER TO TAKE PLACE AFTER

30 DAYS IF NO APPEAL IS FILED

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida this 4

day of DEC, 19 98.


Circuit Judge

Copies furnished to: *Andrew Hall and Associates*
1428 Brickell Avenue
Miami, Florida 33131