

ORIGINAL

JAMES E. "JIM" KING, JR.

PRESIDENT



Charles J. Beck
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STATE OF FLORIDA
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c/o THE FLORIDA LEGISLATURE
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JOHNNIE BYRD

SPEAKER



December 4, 2003

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

RECEIVED FPSC
DEC - 4 PM 3:18
COMMISSION
CLERK

Re: Docket No. 030867-TL, 030868-TL, 030869-TL and 030961-TI

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of Citizens' Motion to Compel Against AT&T; Motion to Require AT&T to Respond by Monday, December 8, 2003; and Request for Ruling of Prehearing Officer by Tuesday, December 9, 2003. A diskette in Word format is also submitted.

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

AUS _____ CJB:bsr
CAF _____
CMP 5
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GCL 1
OPC _____
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SEC 1
OTH 1 copy to each docket

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Mov
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

12422 DEC-4 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Verizon Florida Inc. to Reform)
Its Intrastate Network Access and Basic Local) Docket no. 030867TL
Telecommunications rates in Accordance with)
Florida Statutes, Section 364.164)

In re: Petition of Sprint-Florida, Incorporated,)
To reduce intrastate switched network) Docket no. 030868-TL
Access rates to interstate parity in)
Revenue neutral manner pursuant to)
Section 364.164(1), Florida Statutes)

In re: Petition by BellSouth)
Telecommunications, Inc.,) Docket no. 030869-TL
To Reduce Its Network Access Charges)
Applicable To Intrastate Long Distance In)
A Revenue-Neutral Manner)

In re: Flow-through of LEC Switched Access) Docket no. 030961-TO
Reductions by IXCs, Pursuant to Section)
364.163(2), Florida Statutes) Filed November 19, 2003

CITIZENS' MOTION TO COMPEL AGAINST AT&T; MOTION TO REQUIRE AT&T TO RESPOND BY MONDAY, DECEMBER 8, 2003; AND REQUEST FOR RULING OF PREHEARING OFFICER BY TUESDAY, DECEMBER 9, 2003

The Citizens of Florida file this motion requesting the Prehearing Officer to require AT&T Communications of the Southern States, LLC (AT&T) to produce all of the documents requested in Citizens' second set of requests for production of documents dated November 19, 2003. Because of the short amount of time remaining before the hearing scheduled in these dockets, Citizens request the Prehearing Officer to require AT&T to file their response to this motion by no later than Monday, December 8, 2003, and also request the Prehearing Officer to issue his ruling by Tuesday, December 9, 2003. In support of this motion Citizens state the following:

DOCUMENT NUMBER-DATE

12422 DEC-4 8

FPSC-COMMISSION CLERK

1. On November 18, 2003, AT&T announced that "it is entering the Florida local residential phone market, focusing first on customers currently served by BellSouth."¹

2. Citizens' second set of requests for production of documents dated November 19, 2003, asked AT&T the following:

"2. Please provide all documents in your possession, custody, or control discussing or evaluating the decision of AT&T to offer local telephone service in all or part of the area served by BellSouth Telecommunications, Inc., in Florida.

3. Please provide all documents in your possession, custody or control comparing, contrasting, or evaluating providing local telephone service in part or all of the areas served by Verizon Florida Incorporated or by Sprint Florida in Florida.

4. Please provide all documents in your possession, custody or control discussing or evaluating the role of (a) the price of basic local telephone service in Florida, (b) the price of unbundled network elements in Florida, (c) the price of access charges in Florida, or (d) any other factor in the decision of AT&T to offer local telephone service in Florida."

3. On or about November 24, AT&T filed "general objections" to these requests, and yesterday it filed specific objections.

4. None of the general objections related specifically to the requests for documents. Instead, the general objections were simply boilerplate objections that companies typically file in response to all discovery requests. Since none of the general objections state how they relate specifically to the documents requests, they are nothing

¹ <http://www.att.com/news/item/0,1847,12527,00.html>.

more than unsupported conclusions having no substance. Citizens have previously filed responses to these types of general objections², and we adopt those responses in response to the general objections made by AT&T here.

5. The specific objection filed yesterday by AT&T objects to producing any document responsive to the requests for documents because, according to AT&T, the documents disclose "trade secrets." Citing various chapters of the Florida Statutes other than chapter 364 (which governs this proceeding), AT&T claims that it is entitled to totally withhold documents it claims as "trade secrets."

6. AT&T's objection is at odds with chapter 364, Florida Statutes, the Commission's rules governing confidential information, and established practice at the Commission with which other companies abide. Section 364.183, Fla. Stat. (2003) states the following:

"364.183 Access to company records.--

(1) The commission shall have access to all records of a telecommunications company that are reasonably necessary for the disposition of matters within the commission's jurisdiction. The commission shall also have access to those records of a local exchange telecommunications company's affiliated companies, including its parent company, that are reasonably necessary for the disposition of any matter concerning an affiliated transaction or a claim of anticompetitive behavior including claims of cross-subsidization and predatory pricing. The commission may require a telecommunications company to file records, reports or other data directly related to matters within the

² For example, see Citizens' second motion to compel answers to interrogatories and PODs from BellSouth filed September 23, 2003, and Citizens' second motion to compel PODs from Verizon filed September 18, 2003.

commission's jurisdiction in the form specified by the commission and may require such company to retain such information for a designated period of time. Upon request of the company or other person, any records received by the commission which are claimed by the company or other person to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Discovery in any docket or proceeding before the commission shall be in the manner provided for in Rule 1.280 of the Florida Rules of Civil Procedure. Upon a showing by a company or other person and a finding by the commission that discovery will require the disclosure of proprietary confidential business information, the commission shall issue an appropriate protective order designating the manner for handling such information during the course of the proceeding and for protecting such information from disclosure outside the proceeding. Such proprietary confidential business information shall be exempt from s. 119.07(1). Any records provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the commission and the Office of the Public Counsel and any other party subject to the public records law as confidential and shall be exempt from s. 119.07(1), pending a formal ruling on such request by the commission or the return of the records to the person providing the records. Any record which has been determined to be proprietary confidential business information and is not entered into the official record of the proceeding shall be returned to the person providing the record within 60 days after the final order, unless the final order is appealed. If the final order is appealed, any such record shall be returned within 30 days after the decision on appeal. The commission shall adopt the necessary rules to implement this subsection.

(3) The term "proprietary confidential business information" means information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that

the information will not be released to the public. The term includes, but is not limited to:

- (a) Trade secrets.
- (b) Internal auditing controls and reports of internal auditors.
- (c) Security measures, systems, or procedures.
- (d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the company or its affiliates to contract for goods or services on favorable terms.
- (e) Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of information.
- (f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

(4) Any finding by the commission that a record contains proprietary confidential business information is effective for a period set by the commission not to exceed 18 months, unless the commission finds, for good cause, that the protection from disclosure shall be for a specified longer period. The commission shall order the return of a record containing proprietary confidential business information when such record is no longer necessary for the commission to conduct its business. At that time, the commission shall order any other person holding such record to return it to the person providing the record. Any record containing proprietary confidential business information which has not been returned at the conclusion of the period set pursuant to this subsection shall no longer be exempt from s. 119.07(1) unless the telecommunications company or affected person shows, and the commission finds, that the record continues to contain proprietary confidential business information. Upon such finding, the commission may extend the period for confidential treatment for a period not to exceed 18 months unless the commission finds, for good cause, that the protection from disclosure shall be for a specified longer period. During commission consideration of an extension, the record in question remains exempt from s. 119.07(1). The commission shall adopt rules to implement this subsection, which shall

include notice to the telecommunications company or affected person regarding the expiration of confidential treatment. "

Importantly, subsection (3)(a) of the statute specifically includes trade secrets within the definition of "proprietary confidential business information," and subsection (2) contemplates access to such information by the Office of Public Counsel subject to appropriate protective orders by the Commission.

7. Commission rule 25-22.006 details the procedure to be used to handle proprietary confidential business information, as defined in section 364.183, Fla. Stat. (2003). Subsection (6) of the rule deals with discovery and sets forth a manner by which the Office of Public Counsel may take possession of such information.

8. All of these provisions are well known to AT&T, but AT&T has chosen to ignore them. The Prehearing Officer should not allow AT&T to flout the same rules and procedures that are followed by other companies before the Commission.

WHEREFORE, Citizens request the Prehearing Officer to (1) order AT&T to respond to this motion by Monday, December 8, 2003, (2) rule on this motion by Tuesday, December 9, 2003, and require AT&T to produce all of the documents requested in Citizens' second set of requests for production of documents to AT&T by no later than 5:00 p.m. on Tuesday, December 9, 2003.

Respectfully submitted,



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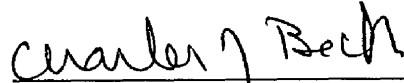
(850) 488-9330

Attorney for Florida's Citizens

DOCKET NO. 030961-TI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing letter has been furnished by U.S. Mail, hand-delivery and/or overnight delivery to the following parties on this 4th day of December, 2003.



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