

ORIGINAL

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**From:** Rhonda Dulgar [rhonda@landersandparsons.com]  
**Sent:** Friday, September 09, 2005 4:52 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Electronic Filing -- Docket No. 041269-TP  
**Attachments:** Cox-Motion to Quash.Sept09.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 041269-TP

In re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law.

c. Document being filed on behalf of Cox Florida Telcom, L.P.

d. There are a total of 8 pages.

e. The document attached for electronic filing is Cox Florida Telcom, L.P.'s Objections, Motion to Quash, and Motion for Protective Order in Response to BellSouth Telecommunications, Inc.'s Subpoena Duces Tecum, and Incorporated Request for Hearing or Oral Argument.

(see attached file: Cox-Motion to Quahs.Sept9.doc)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar  
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DOCUMENT NUMBER-DATE

08618 SEP-9 05

# ORIGINAL

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Establish )  
Generic Docket to Consider ) Docket No. 041269-TP  
Amendments to Interconnection )  
Agreements Resulting From ) Filed: September 9, 2005  
Changes of Law )  
\_\_\_\_\_ )

COX FLORIDA TELCOM, L.P.'S OBJECTIONS, MOTION TO QUASH, AND  
MOTION FOR PROTECTIVE ORDER IN RESPONSE TO BELL SOUTH  
TELECOMMUNICATIONS, INC.'S SUBPOENA DUCES TECUM, AND  
INCORPORATED REQUEST FOR HEARING OR ORAL ARGUMENT

Cox Florida Telcom, L.P. ("Cox"), pursuant to Rules 28-106.204 and 28-106.212(3), Florida Administrative Code, hereby files its objections to BellSouth Telecommunications, Inc.'s (BellSouth) Subpoena Duces Tecum ("Subpoena"), dated September 2, 2005, and further moves the Commission to issue its order quashing said subpoena and protecting Cox from BellSouth's Subpoena. In summary, BellSouth appears through its Subpoena to be seeking information that it previously attempted to obtain via a request for admission and that relates to certain collocation arrangements in another state. Moreover, as explained below, if BellSouth is seeking documentary evidence of such collocation arrangements, BellSouth already has the relevant agreement and accordingly, BellSouth's Subpoena is harassing and wasteful of the Commission's, Cox's, and BellSouth's resources.

In further support of its objection, motion to quash, and motion for protective order, Cox states as follows.

1. BellSouth's Subpoena purports to demand that an officer of Cox appear in Tallahassee on September 12 to produce

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FLORIDA PUBLIC SERVICE COMMISSION

"Information set forth in Attachment 1." BellSouth's Subpoena states clearly that "THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE TAKEN." Attachment 1 to BellSouth's Subpoena is BellSouth's First Request for Admission to Cox Florida Telcom, L.P., filed in this docket on August 8, 2005.<sup>1</sup> The admission sought was that Cox, or an affiliate, "ha[s] fiber-based collocation arrangements at the following BellSouth wire centers: NWORLAMA." The abbreviation refers to a BellSouth wire center located at or near New Orleans, Louisiana.

2. As such, BellSouth's discovery was and is outside the scope of permissible discovery in this case. Cox is not a party to this docket and thus has no legal obligation under the Florida Rules of Civil Procedure to respond to BellSouth's discovery. Accordingly, on August 29, 2005, Cox filed its Objections to BellSouth's request for admission, reserving its rights to raise all other appropriate objections and stating clearly that, by filing these objections, Cox in no way intended to become a party to this case.

3. Approximately four days later, BellSouth served its Subpoena on Cox. As noted above, the information sought to be subpoenaed appears to be a response to a request for admission. This is obviously inappropriate: one cannot subpoena "information;" one can subpoena documents, persons, and things, but BellSouth has not attempted to do so.

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<sup>1</sup> BellSouth's Request for Admission was served on Cox via U.S. Mail only, under cover of a letter dated August 8, 2005, received by Cox on August 11, 2005.

4. Even generously interpreting BellSouth's Subpoena as attempting to obtain an opportunity to copy documents relating to the collocation arrangements inquired about in BellSouth's request for admission, it is readily apparent that BellSouth's efforts here are harassing and inappropriate attempts to obtain back-door, third-party-once-removed discovery of questionable value in this docket.

5. Regarding relevance, as noted above, the wire center about which BellSouth's request for admission inquired is located in Louisiana. This docket addresses issues relating to what changes, if any, recent decisions of the Federal Communications Commission and the United States Court of Appeals "require in existing approved interconnection agreements between BellSouth and competitive local exchange carriers (CLECs) in Florida." Order No. PSC-05-0639-PCO-TP (Order Establishing Scope of Proceeding) at 1 (emphasis supplied).

6. Cox Florida Telcom has no facilities in Louisiana. Cox is aware that an affiliate has collocation arrangements in Louisiana, but - and the following demonstrates that BellSouth's Subpoena is harassment - the only such arrangement of which Cox is aware is between a Cox affiliate and BellSouth Telecommunications, Inc. itself. In other words, to the extent that BellSouth is attempting to obtain from Cox documentary evidence relating to a collocation arrangement in Louisiana, BellSouth itself is a direct party to such collocation arrangement, and BellSouth thus must have the agreement. It is

harassment, and a waste of Cox's, BellSouth's, and the Commission's resources, for BellSouth to attempt to conduct improper discovery, and then to attempt to subpoena, a document that BellSouth itself already has.

7. Regarding the issue of affiliate discovery, the Commission has articulated the following three-prong test.

Whether a subsidiary may be compelled to obtain documents from a parent company or affiliate for discovery depends on consideration of three factors: 1) the corporate structure; 2) the non-party's connection to the transaction at issue; and, 3) the degree to which the non-party will benefit from an outcome favorable to the corporate party to the litigation.

In Re: Petition by Gulf Power Company for Approval of Purchased Power Arrangement Regarding Smith Unit 3 for Cost Recovery Through Recovery Clauses Dealing with Purchased Capacity and Purchased Energy, Docket No. 010827-EI, Order No. PSC-01-1725-PCO-EI at 6-7 (Fla. Pub. Serv. Comm'n, August 23, 2001), citing to Afros S.P.A. v. Krauss-Maffei Corp., 113 F.R.D. 127, 130 (D. Del. 1986). Here, even the subpoenaed entity, Cox Florida Telcom, is a non-party to this case. Cox Florida Telcom obviously has no connection to the Louisiana transaction, and Cox's Louisiana affiliate is outside the Commission's jurisdiction and obviously will not benefit from the outcome of this Florida-specific docket in which its Florida affiliate is not even a party. (Cox Florida Telcom does, of course, recognize that the Order Establishing Scope of Proceeding states that the outcome of this docket will be binding on Cox Florida

Telcom, and has elected not to be a party to this docket.)

**CONCLUSION AND RELIEF REQUESTED**

Cox Florida Telcom, L.P., is not a party to this docket. Therefore, BellSouth's discovery requests to Cox are inappropriate and outside the bounds of permissible discovery pursuant to the Florida Rules of Civil Procedure. BellSouth's Subpoena is of the same ilk: it is no more than a harassing, resource-wasting attempt to obtain back-door, third-party-once-removed discovery of a document that BellSouth already has, which relates to collocation arrangements in another state, and the Commission should issue its order quashing BellSouth's Subpoena and otherwise protecting Cox from this inappropriate discovery effort.

Additionally, while Cox fully believes that the Commission can and should issue its order quashing BellSouth's Subpoena on the face of the papers before it, i.e., BellSouth's Subpoena and Cox's objection and motion filed here, if the Commission or the Prehearing Officer were inclined to deny Cox's motion to quash, then Cox requests a hearing or oral argument, at which Cox will appear for the limited purpose of defending itself and its interests against BellSouth's inappropriate discovery requests.

Respectfully submitted this 9th day of September, 2005.

LANDERS & PARSONS

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Objections to BellSouth's Request for Admission was served via Electronic Mail and First Class United States Mail this 9th day of September, 2005, to the following:

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