

Ruth Nettles

090430-TP

From: Woods, Vickie [vf1979@att.com]
Sent: Friday, October 23, 2009 4:36 PM
To: Filings@psc.state.fl.us
Subject: 090430-TP AT&T Florida's Partial Motion to Dismiss and Answer and Affirmative Defenses
Importance: High
Attachments: Document.pdf; LEGAL-#745528-v1-090430-TP_AT&T's_Partial_Motion_to_Dismiss_and_Answer_and_Affirmative_Defenses.DOC

- A. Vickie Woods
BellSouth Telecommunications, Inc. d/b/a AT&T Florida
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Tallahassee, Florida 32301
(305) 347-5560
vf1979@att.com
- B. Re: Docket No. 090430-TP: Petition for verified emergency injunctive relief and request for stay of AT&T's CLEC OSS-related releases by Saturn Telecommunications Services, Inc.
- C. BellSouth Telecommunications, Inc. d/b/a AT&T Florida

on behalf of Manuel A. Gurdian
- D. 20 pages (.pdf) total (includes letter, pleading and certificate of service)
18 pages (word doc.) (pleading)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Partial Motion to Dismiss and Answer and Affirmative Defenses

.pdf .word doc.

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10/23/2009

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October 23, 2009

Ms. Ann Cole, Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 090430-TP: Petition for verified emergency injunctive relief and request for stay of AT&T's CLEC OSS-related releases by Saturn Telecommunications Services, Inc.

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Partial Motion to Dismiss and Answer and Affirmative Defenses, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Manuel A. Gurdian

cc: All parties of record
Jerry Hendrix
Gregory R. Follensbee


CERTIFICATE OF SERVICE
Docket No. 090430-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and First Class U.S. Mail this 23rd day of October, 2009 to the following:

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Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for verified emergency injunctive relief)
and request for stay of AT&T's CLEC)
OSS-related releases by Saturn Telecommunication)
Services, Inc.)
_____)

Docket No. 090430-TP

Filed: October 23, 2009

**AT&T FLORIDA'S PARTIAL MOTION TO DISMISS AND ANSWER AND
AFFIRMATIVE DEFENSES**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") files this Partial Motion to Dismiss and Answer and Affirmative Defenses to the Verified Emergency Petition for Injunctive Relief and Request To Restrict or Prohibit AT&T from Implementing Its CLEC OSS-Related Releases ("Petition") filed by Saturn Telecommunication Services, Inc. ("STS"), and says:

INTRODUCTION

On October 13, 2009, STS filed a Petition which amended STS's Verified Emergency Petition for Injunctive Relief and Request for Stay of AT&T's CLEC OSS-Related Releases filed on September 2, 2009. As discussed in AT&T Florida's response to STS's initial petition, once again based on nothing more than erroneous information, misplaced conclusions, and uncontrolled paranoia, STS has decided to forgo the Change Control Process ("CCP") and attempt to unilaterally decide, through pre-emptive action, what is best for the entire CLEC community. The Florida Public Service Commission ("Commission") should not endorse or encourage this improper course of conduct but, instead, should dismiss this Petition. That said, in order to give the Commission some perspective and facts on this issue, AT&T Florida will attempt to address some of the (unfounded) concerns raised by STS.

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In November 2009, AT&T plans to introduce the 22-state LEX GUI ordering interface into the operations support systems ("OSS") of the Legacy BellSouth states. One of the primary purposes of the 22-state LEX project is to provide uniformity to the OSS systems across all of AT&T's 22-state ILEC operations. It is critical to note, however, that the 22-state LEX interface being released in November 2009 includes a number of significant modifications from the existing 13-state LEX interface. These modifications include additional features that are comparable to, and in some instances exactly like, the LENS interface.¹ The LEX enhancement effort has been in planning for two years and has been the subject of an Accessible Letter (CLEC SE09-056) and overviews during CCP meetings in October 2007 (CLEC SE07-039) and August 2009 (CLEC SE09-144).

In order to allow the 9-state CLECs time to adequately test the new 22-state LEX interface without disrupting ongoing operations, AT&T Florida began the testing phase on October 12, 2009. Also, in order to address any issues that CLECs may have upon conclusion of testing, AT&T Florida has agreed for Commission Staff to audit the CLECs' specific complaints surrounding the 22-state LEX GUI ordering interface once it is implemented. AT&T Florida notes that only 2 CLECs so far have chosen to use the LEX testing environment for the November release. One of the two testers is STS. The other tester is successfully using the testing environment, is able to utilize the capabilities in LEX, placed successful test orders and has not identified any major defects with the release.

¹ Given that the 22-state LEX interface to be released in November 2009 has significant modifications from the existing 13-state LEX interface and which had never been utilized by a Florida CLEC prior to testing beginning on October 12, 2009, AT&T Florida is perplexed as to how STS manages to state facts and draw conclusions about the capabilities of the upcoming 22-state LEX interface in its Petition (which is based upon affidavits executed on September 2, 2009). Because all of STS's (erroneous) assumptions are based on their having experimented with the existing 13-state LEX interface (*See, Diaz Affidavit*), the Commission should summarily reject all of STS' so-called facts and conclusions found in the Petition.

Moreover, in order to give the 9-state CLECs time to adequately learn the new 22-state LEX interface without disrupting ongoing operations, AT&T Florida will keep the existing LENS ordering interface operational until at least March 22, 2010. This will provide more than adequate time for the CLECs to train their personnel on the 22-state LEX interface.

Regarding issues of functionality, users of the 22-state LEX will have access to the same pre-order functions (such as address validation, features & services availability, telephone number reservation, view customer service record, and PIC/LPIC search), first level validations, and due date calculations that are currently available in the LENS Firm Order Mode when creating and issuing a local service request ("LSR"). Further, RNS, LENS, and the enhanced 22-state LEX utilize the very same back-end OSS for validation of these edits. As with the LENS interface, the 22-state LEX interface to be released in November 2009 will provide rejections and clarifications of LSRs within seconds of the CLEC representative submitting the LSR. In short, the 22-state LEX interface will provide for all the necessary functionality to create, manage, track, maintain, change or supplement LSRs and is every bit as efficient as the existing LENS interface.

The 22-state LEX interface to be released in November 2009 will provide a number of enhancements not currently available through the 13-state LEX interface. Further, a number of the enhancements (noted below), some of which were not previously available to LENS users (shown in bold), will be made available to the 9-state LEX users. Some of these enhancements were added as a direct result of CLEC requests.

- **CLECs will have the ability to order all complex services some of which were not previously available via LENS.**
- **Some core products that could only be ordered manually in the SE will be available electronically via 22-state LEX.**
- **Provides for Template and Copy functionality for creating LSRs with same End User requirements.**

- Pre-order integration within the Create LSR (Firm Order) process for the Core Products.
- Inclusion of all necessary fields within the various LSR forms to allow for ordering of all applicable services.
- Bulk Ordering capability.
- Pre-population of LSR fields based upon Requisition Type / Activity Type combinations.
- **Enhanced Search capability of LSRs based on certain criteria which can retrieve LSRs within a two year period.**
- **Data report capability to provide customized reports within the LEX database.**
- Returns Notifications based upon LSR activity in real time.
- Accounts for unique AT&T Southeast processing such as Fast Track LSR issuance and RPON supplemental allowances.
- **CLEC Profile Utility program to manage pre-population of LSR fields based on a company code.**

Clearly, STS has jumped to erroneous conclusions surrounding the 22-state LEX interface and its upcoming November release. As discussed herein, the Commission should not allow STS to unilaterally forestall the implementation of the 22-state LEX interface, especially given that the unification of the OSS and the resulting enhancements will inevitably inure to the benefit of any CLEC operating in Florida that makes use of the LEX interface when it becomes operational in November.

PARTIAL MOTION TO DISMISS

A. Standard for Motion to Dismiss

A motion to dismiss questions whether the complaint alleges sufficient facts to state a cause of action as a matter of law. *See Varnes v. Dawkins*, 624 So.2d 349, 350 (Fla. 1st DCA 1993). In disposing of a motion to dismiss, the Commission must assume all of the allegations of the complaint to be true. *See In re: Complaint and petition of John Charles Heekin against Florida Power & Light Co.*, Order No. PSC-99-10544-FOF-EI, Docket No. 981923-EI, (Issued May 24, 1999) (citing to *Varnes*, 624 So.2d at 350). To sustain a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief can be granted. *In re: Petition to*

investigate, claim for damages, complaint and other statements against respondents Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Corporation by Bessie Russ, Docket No. 060640-TP, Order No. PSC-07-0332-PAA-TP (Issued April 16, 2007) citing In re: Application for Amendment of Certificates Nos. 359-W and 290-S to Add Territory in Broward County by South Broward Utility, Inc. 95 FPSC 5:339 (1995); Varnes, 624 So.2d at 350.

B. STS' Request for Injunctive Relief

STS requests in the Wherefore clause of the Petition for “[a]n order that this Commission restrain or prohibit AT&T from implementing the AT&T 22-State OSS Alignment in November 2009.” Moreover, STS requests “[a]n order requiring that AT&T Florida cannot retire LENS without this Commission’s approval”; “[a]n order requiring that LEX has the same pre-order edits, and has the same quality and capabilities, prior to retiring LENS”; “[a]n order prohibiting AT&T from retiring LENS until this Commission completes an audit of LEX and Verigate and AT&T corrects all deficiencies found by this Commission”; “[a]n order requiring that AT&T make its LENS OSS with its edit checking capabilities available to STS and other CLECs until any new OSS replacement system contains the same capabilities” and “[a]n order requiring AT&T to continue to provide its LENS OSS with all of its current capabilities available to STS and other CLECs until any new OSS replacement system contains the same capabilities.” However, to the extent STS has requested injunctive relief in its Petition, the Commission cannot provide STS’ requested injunctive relief² and this portion of the Petition must be dismissed or stricken.

As a creature of statute, the Commission has only those powers granted by the Legislature and has no common law or inherent powers. *State v. Mayo*, 354 So. 2d 359, 360

² The Commission’s statutory authority concerning injunctions is limited to seeking injunctive relief in the circuit court. See § 364.015, Fla. Stat. (“The commission is authorized to seek relief in circuit court including temporary or permanent injunctions, restraining order, or any other appropriate order.”).

(Fla. 1977). (“[T]he Public Service Commission was created and exists through legislative enactment. Being a statutory creature, its powers and duties are only those conferred expressly or impliedly by statute.”); *City of Cape Coral v. GAC Utility*, 281 So. 2d 493 (Fla. 1973) (same). Moreover, any authority granted by necessary implication must be derived from fair implication and intendment incident to any express authority. See *Atlantic Coast Line R.R. Co. v. State*, 74 So. 595, 601 (Fla. 1917); *State v. Louisville & N. R. Co.*, 49 So. 39 (Fla. 1909). Finally, “any reasonable doubt as to the existence of a particular power of the Commission must be resolved against it.” *State v. Mayo*, 354 So. 2d 359, 361 (Fla. 1977).

The Commission has acknowledged that it lacks authority to issue injunctions in *In re: Complaint and Petition of Cynwyd Investments Against Tamiami Village Utility, Inc.*, Docket Nos. 920649-WS and 930642-WS, Order No. PSC-94-0210 (February 21, 1994), where it stated: “We agree that this Commission does not have subject matter jurisdiction to issue injunctions” *Id.* at 9; see also *Florida Power & Light Company v. Albert Litter Studios, Inc.* 896 So.2d 891, 892 n.3 (Fla. 3d DCA 2005) (The Commission “concedes that it lacks the authority to issue injunctive relief.”); *In re: Petition to investigate, claim for damages, complaint and other statements against respondents Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Corporation by Bessie Russ*, Docket No. 060640-TP, Order No. PSC-07-0332-PAA-TP (Issued April 16, 2007) (“We find it appropriate to grant BellSouth’s Partial Motion to Dismiss. The Petition/Complaint shall be dismissed in part because we do not have judicial power required to... (b) issue injunctions”) and *In re: Petition for Commission to intervene, investigate and mediate dispute between DSL Internet Corporation d/b/a DSLi and BellSouth Telecommunications, Inc.*, Docket No. 080631-TP, Order No. PSC- 09-0515-PCO-TP (Issued July 21, 2009) (“we find that this Commission does not have the authority to provide injunctive

relief to [Petitioner]. Thus, assuming all of [Petitioner]'s allegations as true, we find that [Petitioner] has failed to state a cause of action for which injunctive relief can be granted. As such, we shall grant the AT&T Partial Motion to Dismiss and thereby dismiss the portion of the Petition in which [Petitioner] requests injunctive relief.”)

Because STS' Petition seeks a remedy that the Commission has no authority to provide, the portion of the Petition seeking injunctive relief should be dismissed or stricken.

C. STS' Request for Costs

STS requests in the Wherefore clause of the Petition for “[a]n order for costs and for such other relief as the Commission deems just and appropriate.” To the extent that Petitioner has costs in its Petition, AT&T Florida requests that this portion of the Petition be dismissed or stricken.

The Commission has no statutory authority to award costs as requested in the Petition. *See In re: Application of George Dorman and M. Pate Snively for a certificate of public convenience and necessity to operate as a radio common carrier in the Winter Haven, Florida area*, Docket No. 72401-RCC, Order No. 5579 (Issued November 9, 1972) (“we find no statutory authority for the Commission to assess costs against the applicants and to award the protestant its costs and attorneys’ fees.”). Moreover, STS is asking the Commission, as a Legislative agency, to entertain requests that it act like a court, which it is not and, thus it cannot award costs. *See In re: Petition to investigate, claim for damages, complaint and other statements against respondents Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Corporation by Bessie Russ*, Docket No. 060640-TP, Order No. PSC-07-0332-PAA-TP (Issued April 16, 2007)(“The Petition/Complaint requests that we grant relief that can only be effected through the exercise of judicial power...[The Complaint] requests an award in the

nature of costs and attorney fees...As a Legislative agency, this Commission may not entertain requests that it act like a court. For this reason alone, we find it appropriate that the claims identified above must be dismissed with prejudice.”).

The Petition cites no statute or contractual basis that authorizes the Commission to award costs. In addition, the Petition requests relief that the Commission has no authority to provide. Thus, the portion of the Petition seeking costs should be dismissed or stricken.

D. STS’s Allegations that AT&T Florida Has Violated Section 364.14(2), Florida Statutes

In its Petition at Paragraph 28, STS cites Section 364.14(2), Florida Statutes and requests that the Commission find AT&T Florida in violation of this statute in the Wherefore clause. However, by the express terms of Section 364.051(c), Florida Statutes, AT&T Florida is not subject to the provisions of Section 364.14, Florida Statutes as AT&T Florida elected price regulation, effective January 1, 1996. *See In re: Notice of election of price regulation by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company*, Docket No. 951354-TL, Order No. PSC-96-0036-FOF-TL (Issued January 10, 1996) (“Southern Bell filed its notice of price regulation on November 1, 1995. Accordingly, we acknowledge the election and note that, effective January 1, 1995[sic], the Company will be subject to the price regulation provisions set forth in 364.051”). Specifically, 364.051(c) provides as follows:

Each company subject to this section is exempt from rate base, rate of return regulation, and the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.14, 364.17, 364.18, and 364.19. (emphasis added).

Therefore, as a matter of law, the Commission cannot find that AT&T Florida violated Section 364.14(2), Florida Statutes and any allegation that AT&T Florida has violated Section 364.14(2) should be dismissed or stricken.

E. STS's Allegations that AT&T Florida Has Violated Section 364.15, Florida Statutes

In its Petition at Paragraph 29, STS cites Section 364.15, Florida Statutes and requests that the Commission find AT&T Florida in violation of this statute in the Wherefore clause. However, the express language of Section 364.15, Florida Statutes, limits the application of this statute to "basic local telecommunications services" and, thus, it has no application to the systems at issue that AT&T Florida provides to STS in Florida. Therefore, as a matter of law, based upon STS's allegations, the Commission cannot find that AT&T Florida violated Section 364.15, Florida Statutes and any allegation that AT&T Florida has violated Section 364.15 should be dismissed or stricken.

ANSWER TO SPECIFIC ALLEGATIONS

As to the specifically-numbered paragraphs in the Petition, AT&T responds to each below. Any and all allegations of the Petition not expressly admitted herein are denied. Further, to the extent incorporated into the Petition, AT&T denies the allegations in the attached Affidavits and plans to rebut said Affidavits in written pre-filed testimony.

1. Paragraph 1 of the Petition requires no response from AT&T Florida.
2. Paragraph 2 of the Petition requires no response from AT&T Florida.
3. AT&T admits the allegations set forth in Paragraph 3 of the Petition.
4. AT&T admits the allegations set forth in Paragraph 4 of the Petition but notes that the correct street address is 675 West Peachtree Street.
5. AT&T admits that the Commission has jurisdiction over this Petition. Any remaining allegations in Paragraph 5 of the Petition are denied.
6. AT&T admits that the Commission has jurisdiction over this Petition. Any remaining allegations in Paragraph 6 of the Petition are denied.

7. AT&T admits that on July 22, 1998 the Commission issued Order No. PSC-98-1001-FOF-TP in Docket No. 980119-TP ("Supra Order"). AT&T contends that the Supra Order has no relevance to this proceeding as neither STS nor any other CLEC (other than Supra, which is now defunct) was a party to that proceeding. While other CLECs may have second-handedly received some benefit from the Supra Order, there is nothing in the Supra Order that suggests it applies to CLECs that were not parties to the proceeding. Thus, any reliance upon the Supra Order is misplaced. Any remaining allegations in Paragraph 7 of the Petition are denied.

8. AT&T contends that the Supra Order speaks for itself and that Paragraph 8 of the Petition requires no affirmative response from AT&T. To the extent STS attempts to take portions of the Supra Order out of context, AT&T denies that those portions of the Supra Order have any relevance. Further, AT&T contends that the Supra Order has no relevance to this proceeding as neither STS nor any other CLEC (other than Supra, which is now defunct) was a party to that proceeding. While other CLECs may have second-handedly received some benefit from the Supra Order, there is nothing in the Supra Order that suggests it applies to CLECs that were not parties to the proceeding. Thus, any reliance upon the Supra Order is misplaced. Any remaining allegations in Paragraph 8 of the Petition are denied.

9. AT&T denies that it has an unfair competitive advantage in the ordering process and that CLEC ordering capabilities are not at parity with AT&T's ordering processes. AT&T contends that it is the responsibility of the CLEC to submit proper, mistake-free orders. AT&T admits that LENS has edit checking capabilities, but AT&T is without knowledge as to how STS utilizes the LENS interface when interacting with STS customers. AT&T contends that the 22-state LEX interface to be released in November 2009 has edit checking capabilities similar to the existing LENS interface. AT&T denies the remaining allegations in Paragraph 9 of the Petition.

10. AT&T contends that the Supra Order speaks for itself and that Paragraph 10 of the Petition (including the footnote thereto) requires no affirmative response from AT&T. To the extent STS attempts to take portions of the Supra Order out of context, or to summarize the testimony in that proceeding, AT&T denies that those portions of the Supra Order have any relevance. Further, AT&T contends that the Supra Order has no relevance to this proceeding as neither STS nor any other CLEC (other than Supra, which is now defunct) was a party to that proceeding. While other CLECs may have second-handedly received some benefit from the Supra Order, there is nothing in the Supra Order that suggests it applies to CLECs that were not parties to the proceeding. Thus, any reliance upon the Supra Order is misplaced. Any remaining allegations in Paragraph 10 of the Petition (including the footnote thereto) are denied.

11. AT&T admits that the Commission issued Order No. PSC-03-1178-PAA-TP on October 21, 2003 and Order No. PSC-04-1146-FOF-TP on November 18, 2004. AT&T admits that these two Orders were issued in the same docket as the Supra Order. AT&T contends that these Orders speak for themselves and that Paragraph 11 of the Petition requires no affirmative response from AT&T. To the extent STS attempts to take portions of those Orders out of context, AT&T denies that those portions of the Orders have any relevance. Further, AT&T contends that the Orders have no relevance to this proceeding as neither STS nor any other CLEC (other than Supra, which is now defunct) was a party to that proceeding. While other CLECs may have second-handedly received some benefit from these Orders, there is nothing in the Orders that suggests they apply to CLECs that were not parties to the proceeding. Thus, any reliance upon these Orders is misplaced. Any remaining allegations in Paragraph 11 of the Petition are denied.

12. The referenced Accessible Letter speaks for itself and requires no response from AT&T. AT&T admits the remaining allegations in Paragraph 12 of the Petition.

13. AT&T admits that it provided a 22-state LEX migration overview at the August 5, 2009 CCP meeting. AT&T admits that the current LENS ordering interface will eventually be replaced by this enhanced 22-state LEX ordering interface. AT&T contends that the Affidavits of Caryn Diaz and Ronald Curry speak for themselves. To the extent being relied upon by STS as fact or opinion inconsistent with AT&T's admissions in this Paragraph, AT&T denies the allegations in the Affidavits and in Paragraph 13 of the Petition. Any remaining allegations in Paragraph 13 of the Petition are denied.

14. AT&T admits that conversations regarding the LEX interface migration were held during the CCP meeting on August 5, 2009. AT&T lacks information sufficient to form a belief as to whether the quoted items were in fact direct quotes, so those allegations are denied. To the extent being relied upon by STS as fact or opinion, AT&T denies the allegations in the Affidavits and in Paragraph 14 of the Petition. Any remaining allegations in Paragraph 14 of the Petition are denied.

15. AT&T contends that the Supra Order speaks for itself and that Paragraph 15 of the Petition (including the footnote thereto) requires no affirmative response from AT&T. To the extent STS attempts to take portions of the Supra Order out of context, or to summarize the testimony in that proceeding, AT&T denies that those portions of the Supra Order have any relevance. Further, AT&T contends that the Supra Order has no relevance to this proceeding as neither STS nor any other CLEC (other than Supra, which is now defunct) was a party to that proceeding. While other CLECs may have second-handedly received some benefit from the Supra Order, there is nothing in the Supra Order that suggests it applies to CLECs that were not

parties to the proceeding. Thus, any reliance upon the Supra Order is misplaced. Any remaining allegations in Paragraph 15 of the Petition (including the footnote thereto) are denied.

16. AT&T admits that RNS prompts corrections that save time during the ordering process, which is also true of the 22-state LEX interface that is being released in November 2009. AT&T contends that the Affidavit of Cesar Lugo speaks for itself. To the extent being relied upon by STS as fact or opinion, AT&T denies the allegations in the Affidavit and in Paragraph 16 of the Petition. Any remaining allegations in Paragraph 16 of the Petition are denied.

17. AT&T contends that the Affidavits of Caryn Diaz and Ronald Curry speak for themselves. To the extent being relied upon by STS as fact or opinion, AT&T denies the allegations in the Affidavits and in Paragraph 17 of the Petition. Any remaining allegations in Paragraph 17 of the Petition are denied.

18. AT&T denies each and every allegation in Paragraph 18 of the Petition.

19. AT&T contends that the Supra Order speaks for itself and that Paragraph 19 of the Petition requires no affirmative response from AT&T. To the extent STS attempts to take portions of the Supra Order out of context, AT&T denies that those portions of the Supra Order have any relevance. Further, AT&T contends that the Supra Order has no relevance to this proceeding as neither STS nor any other CLEC (other than Supra, which is now defunct) was a party to that proceeding. While other CLECs may have second-handedly received some benefit from the Supra Order, there is nothing in the Supra Order that suggests it applies to CLECs that were not parties to the proceeding. Thus, any reliance upon the Supra Order is misplaced. Any remaining allegations in Paragraph 19 of the Petition are denied.

20. AT&T admits that ALECs and CLECs are interchangeable terms in Florida telecommunications jargon. AT&T contends that the Supra Order speaks for itself and that Paragraph 20 of the Petition requires no affirmative response from AT&T. To the extent STS attempts to take portions of the Supra Order out of context, AT&T denies that those portions of the Supra Order have any relevance. Further, AT&T contends that the Supra Order has no relevance to this proceeding as neither STS nor any other CLEC (other than Supra, which is now defunct) was a party to that proceeding. While other CLECs may have second-handedly received some benefit from the Supra Order, there is nothing in the Supra Order that suggests it applies to CLECs that were not parties to the proceeding. Thus, any reliance upon the Supra Order is misplaced. Any remaining allegations in Paragraph 20 of the Petition are denied.

21. AT&T denies the allegations in Paragraph 21 of the Petition. Further, to the extent STS argues that the Supra Order created an obligation on AT&T, that allegation is also denied and AT&T contends that the Supra Order speaks for itself. AT&T also contends that the Supra Order has no relevance to this proceeding as neither STS nor any other CLEC (other than Supra, which is now defunct) was a party to that proceeding. While other CLECs may have second-handedly received some benefit from the Supra Order, there is nothing in the Supra Order that suggests it applies to CLECs that were not parties to the proceeding. Thus, any reliance upon the Supra Order is misplaced. Any remaining allegations in Paragraph 21 of the Petition are denied.

22. AT&T admits that it utilizes edit checking capabilities in RNS. The 22-state LEX interface being released in November 2009 also provides edit checking capabilities. The remaining allegations in Paragraph 22 of the Petition are denied.

23. AT&T lacks information sufficient to form a belief as to whether STS might discover any “deficiencies in LEX after it commences testing”, so those allegations are denied. AT&T contends that the referenced Statutes, Rules and statutory language speak for themselves and that Paragraph 23 of the Petition requires no affirmative response from AT&T. To the extent STS contends that the referenced Statutes, Rules and statutory language have any relevance to this proceeding or that AT&T is in violation of those statutes or Rules, AT&T denies those allegations. Any remaining allegations in Paragraph 23 of the Petition are denied.

24. AT&T contends that the referenced Rules, Statutes and statutory language speak for themselves. To the extent STS contends that the referenced Rules, Statutes and statutory language have any relevance to this proceeding or that AT&T Florida is in violation of those rules or statutes, AT&T Florida denies those allegations. AT&T Florida further denies STS’s allegations in Paragraph 24 of the Petition that Verigate and LEX are not comparative to AT&T Florida’s Retail RNS system and that Verigate and LEX are “inferior and not equal or at parity with AT&T’s Retail RNS.” AT&T Florida affirmatively states that LENS, LEX and AT&T Florida’s Retail RNS system all perform the following pre-ordering functions: Address Validation, Telephone Number Reservation, Customer Service Record Retrieval and Validation, Product/Feature Availability, PIC/LPIC (LD Carrier and Local Carrier choice) and due date retrieval. Additionally, all three systems (LENS, LEX and RNS) access the same backend support systems for these pre-order functions. Any remaining allegations in Paragraph 24 of the Petition are denied.

25. AT&T contends that the referenced Statutes and statutory language speak for themselves and that Paragraph 25 of the Petition requires no affirmative response from AT&T. To the extent STS contends that the referenced Statutes and statutory language have any

relevance to this proceeding or that AT&T is in violation of those statutes, AT&T denies those allegations. Any remaining allegations in Paragraph 25 of the Petition are denied.

26. AT&T denies the allegations in Paragraph 26 of the Petition. Further, to the extent STS argues that the Supra Order created an obligation on AT&T, that allegation is also denied and AT&T contends that the Supra Order speaks for itself. AT&T also contends that the Supra Order has no relevance to this proceeding as neither STS nor any other CLEC (other than Supra, which is now defunct) was a party to that proceeding. While other CLECs may have second-handedly received some benefit from the Supra Order, there is nothing in the Supra Order that suggests it applies to CLECs that were not parties to the proceeding. Thus, any reliance upon the Supra Order is misplaced. Any remaining allegations in Paragraph 26 of the Petition are denied.

27. AT&T contends that the referenced Rules, Statutes and statutory language speak for themselves and that Paragraph 27 of the Petition requires no affirmative response from AT&T. To the extent STS contends that the referenced Rules, Statutes and statutory language have any relevance to this proceeding or that AT&T is in violation of those Rules or Statutes, AT&T denies those allegations. Any remaining allegations in Paragraph 27 of the Petition are denied.

28. AT&T contends that the referenced Statutes and statutory language speak for themselves and that Paragraph 28 of the Petition requires no affirmative response from AT&T. To the extent STS contends that the referenced Statutes and statutory language have any relevance to this proceeding or that AT&T is in violation of those statutes, AT&T denies those allegations. Moreover, Section 364.14, Florida Statutes is not applicable to AT&T Florida and

the Commission has no authority to find AT&T Florida in violation of this statute. *See* F.S. § 364.051(1)(c). Any remaining allegations in Paragraph 28 of the Petition are denied.

29. AT&T contends that the referenced Statutes and statutory language speak for themselves and that Paragraph 29 of the Petition requires no affirmative response from AT&T. AT&T Florida affirmatively states that Section 364.15, Florida Statutes, (2009) is limited solely to the provision of “basic local telecommunications services” and, thus, is not applicable to the systems at issue in the Petition. To the extent STS contends that the referenced Statutes and statutory language have any relevance to this proceeding or that AT&T is in violation of those statutes, AT&T denies those allegations. Any remaining allegations in Paragraph 29 of the Petition are denied.

30. AT&T contends that the referenced Statutes and statutory language speak for themselves and that Paragraph 30 of the Petition requires no affirmative response from AT&T. To the extent STS contends that the referenced Statutes and statutory language have any relevance to this proceeding or that AT&T is in violation of those statutes, AT&T denies those allegations. Any remaining allegations in Paragraph 30 of the Petition are denied.

31. AT&T denies that STS is entitled to any relief in this Petition. Further, the Commission cannot grant the relief requested because: (a) the Commission lacks the requisite jurisdiction and/or (b) STS has failed to demonstrate that it is entitled to any relief. Therefore, any claims for relief should be denied by the Commission.

AFFIRMATIVE DEFENSES


1. STS' Petition fails to state a cause of action upon which relief may be granted.
2. STS lacks standing to allege violation of a Commission Order to which it was not a party.

3. The provisions of Section 364.14, Florida Statutes are not applicable to AT&T Florida and the Commission has no authority to find AT&T Florida in violation of this statute.

4. Section 364.15, Florida Statutes is limited solely to the provision of "basic local telecommunications services" and is not applicable to the systems at issue in the Petition.

WHEREFORE, having responded to the Petition, AT&T Florida respectfully requests that the Commission issue an Order dismissing the Petition and granting such further relief as the Commission deems just and proper.

Respectfully submitted this 23rd day of October, 2009.



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