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100340-TP

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Sent: Thursday, July 29, 2010 3:37 PM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; Charles Murphy; Vicki Gordon Kaufman
Subject: Docket No. 100340-TP
Attachments: American Dial Tone Motion to Quash.docx

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

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- b. This filing is made in Docket No. 100340-TP.
- c. The document is filed on behalf of American Dial Tone, Inc.
- d. The total pages in the document are 24 pages.
- e. The attached document is American Dial Tone, Inc.'s Motion to Quash Subpoena.

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DOCUMENT NUMBER-DATE

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7/29/2010

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of Associated
Telecommunications Management
Services, LLC (ATMS) companies
For compliance with Chapter 25-
24, F.A.C., and applicable lifeline,
Eligible telecommunication carrier, and
Universal service requirements.

Docket No. 100340-TP

Filed: July 29, 2010

American Dial Tone, Inc.'s Motion to Quash Subpoena

American Dial Tone, Inc. (American Dial Tone), pursuant to section 120.569(2)(k)1, Florida Statutes, rule 1.410(c), Florida Rules of Civil Procedure, and rule 28-106.212, Florida Administrative Code, hereby objects to and moves to quash the Commission Staff subpoena served on American Dial Tone on or about July 2, 2010. (Exhibit A).

Background

1. This docket was opened on June 28, 2010. A review of the docket file shows that Staff has filed two documents since the docket was opened. The first is a form entitled "Request to Establish Docket" in which Commission Staff requested that this docket be opened and be styled an investigation. There is no documentation accompanying the request and, in fact, the request states that supporting documentation will "be provided with the recommendation." Thus, no reason, justification or information is provided as to why Staff requests that an investigation be instituted.

2. The second document, filed the next day, is a request that a number of subpoenas be issued, requiring various companies to produce a vast array of documents on July 19, 2010. The subpoena to American Dial Tone is the subject of this motion.¹

¹ Similar, though not identical, subpoenas were issued to other companies and similar motions to quash are filed simultaneously herewith.

3. Neither of these documents provides any information as to what the subject of the investigation is or what Commission Staff thinks may be at issue. Given the breadth of the subpoena, it is impossible to tell what Staff is attempting to investigate.

4. Upon receipt of the subpoena, legal Staff was contacted regarding the subject of the investigation, in an attempt to narrow the requests and resolve any issues with which Staff may be concerned. However, Staff preferred to proceed with the subpoena and American Dial Tone is still unaware of what the explicit subject matter of the investigation is.

Relevance and Scope of A Subpoena

5. A subpoena is not a blanket vehicle by which to request a broad and vast array of documents which are not tied in any way to matters at issue in a proceeding. However, that appears to be exactly what Commission Staff has done with the subpoena served on American Dial Tone. This is impermissible and thus, the subpoena must be quashed in its entirety.

6. Information sought in a subpoena must be relevant and cannot be unreasonable or burdensome. This standard is clear from the applicable rules and statutes. For example, section 120.569(2)(k)1, Florida Statutes, addresses the issuance of subpoenas in administrative proceedings. It states that a subpoena should be quashed if the subpoena is “unreasonably broad in scope, or requires the production of irrelevant material.” The subpoena at issue here is both unreasonably broad and requires the production of irrelevant material.

7. Similarly, rule 1.410(2)(c), Florida Rules of Civil Procedure, provides that a subpoena should be quashed if it is unreasonable or oppressive. The subject subpoena, as demonstrated below, is both.

8. Florida case law describes the limits on subpoena power. A subpoena must be “properly limited in scope, relevant in purpose, and specific in directive,” in order not to be

unduly burdensome.” *Check ‘N Go of Florida, Inc. v. State*, 790 So.2d 454, 460 (Fla. 5th DCA 2001), *rev. denied*, 817 So.2d 845 (Fla. 2002), quoting *Dean v. State*, 478 So.2d 38, 40 (Fla. 1985). Quoting the United State’s Supreme Court, the *Check ‘N Go* court counseled against “fishing expeditions” into private papers. *Id.* at 460. Further, in *Check ‘N Go*, the court stated:

A subpoena duces tecum may not lawfully require the production of a mass of books and papers, merely so that one may search through them to gather evidence; and an omnibus subpoena for all, or even a substantial part, of the books and records of the subpoenaed party is invalid.

Id. at 460, citations omitted. Staff’s subpoena fails to meet the necessary standards for a lawful subpoena as set forth above.

9. The United States Supreme Court has held that:

It is now settled that, when an administrative agency subpoenas corporate books or records, the Fourth Amendment requires that *the subpoena be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.*

See v. City of Seattle, 387 U.S. 541, 544 (1967), footnote omitted, emphasis added. The Staff subpoena fails to meet this standard because, as described below, the subpoena is not sufficiently limited in scope or relevant in purpose.

10. American Dial Tone is extremely concerned with and objects to the expansive and overbroad nature of the documents sought in the subpoena which is the subject of this motion. Though this docket is styled as an “investigation,” American Dial Tone has no idea and has been not put on any notice as to what is being investigated. Fundamental requirements of due process mandate that American Dial Tone be put on notice of the specific subject matter of the investigation and any allegations related thereto. Otherwise, it cannot appropriately respond to the subpoena nor otherwise evaluate the materials being requested.

11. Instead, American Dial Tone has received an extensive subpoena request with no information as to what facts, claims or alleged violations Staff believes are at issue. American Dial Tone should not be required to produce reams of documents without being advised specifically as to what the Commission Staff thinks the subject matter of investigation is.

12. It is beyond dispute that subpoenas may only seek relevant information related to the merits of the inquiry. None of the requests in the subject subpoena can meet this basic standard. Because American Dial Tone has no idea what the Commission Staff is attempting to investigate or why, the scope and breadth of the subpoena cannot, on its face, meet the standard of relevancy required by statute and rule. Until it is clear what Staff thinks is at issue in this docket and puts American Dial Tone on notice of its concerns, none of the documents sought can be relevant to an undisclosed investigation.

13. Further, American Dial Tone can make no assessment as to the relevance of any of the documents sought. As just one example, in Request No. 9, Staff seeks “all corporate minutes of American Dial Tone including stockholder meetings and Board of Director meetings from June 2009 through May 2010.” Many items are discussed at stockholder and director meetings; most, if not all, are unlikely to be related to matters to be reviewed in this docket. A similarly expansive request is made for state and federal income tax returns. These requests are in no way limited in scope or subject and because the subject of the investigation is not known, American Dial Tone does not have any way to assess Staff’s requests. However, one thing is certain, American Dial Tone is not required to blindly produce documents in the face of an undesignated and undisclosed investigation.

14. At this point, the subpoena appears to be an overly broad attempt by Staff to access reams of documents which are not related to any problem or set of facts of which

American Dial Tone is aware or on notice. *Thus, as to each and every request in the subpoena, American Dial Tone objects on the grounds of relevance and overbreadth.*

15. Finally, as described in detail below, it would cost American Dial Tone thousands of dollars to respond to this subpoena. Before such resources are expended, American Dial Tone is entitled to understand what the issues are which Staff seeks to review.

16. American Dial Tone is willing to work with Staff to provide relevant documents when it is apprised of and has an understanding of the nature of the inquiry in which Staff is engaged.

Place of Production

17. The subpoena directs that the documents at issue be produced at the Commission's offices in Tallahassee. American Dial Tone objects to the place designated for production as such records, to the extent they exist, are not located in Tallahassee. It would be burdensome and oppressive to transport them to Tallahassee. If any production does occur, after clarification of the matters at issue in this docket, such production should occur where the records are located. See rule 1.350(b), Florida Rules of Civil Procedure.

18. Each specific request is discussed below and incorporates paragraphs 1-17 above.

Request No. 1

19. In Request No. 1, Staff seeks specific and extensive customer information for customers in eight states and Florida. First, American Dial Tone objects to this request on the grounds that the Commission lacks jurisdiction to subpoena the documents pertaining to information outside of Florida. Commission Staff seeks a great deal of specific information regarding customers in Alabama, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. The Commission does not have jurisdiction over operations in

states other than Florida nor the ability to request information as to customers outside its jurisdiction. This request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

20. Further, the request is overly broad and burdensome and oppressive. The request is burdensome as it would require extensive work on the part of American Dial Tone to collect and provide the information requested. To respond to this request would require American Dial Tone to contact its database vendor, request information, review all customer information, redact all CPNI not related to Florida, prepare for hearing for objections, prepare a custom report for each required field pertaining to the information requested, prepare the report, and review the report for accuracy. This would take approximately 100 man hours at a total cost of approximately \$2,700.00 plus costs from vendors and attorney fees. Such a request is particularly burdensome and oppressive in light of the lack of any connection of this information to the undisclosed purpose of this docket. The subpoena provides absolutely no justification for the requirement that American Dial Tone expend time and resources on a request that would encompass thousands of customers.

21. As to the portion of the request related to Florida, it is similarly overbroad and burdensome for the reasons described above. To collect the Florida information, would require American Dial Tone to contact its database vendor, request information, review all customer information, redact all CPNI information, prepare for hearing for objections, prepare a custom report for each required field pertaining to the information requested, prepare the report, and review the report for accuracy. This would take approximately 20 man hours at a total cost of approximately \$1,000.00 plus costs from vendors and attorney fees. Such a request is particularly burdensome and oppressive in light of the lack of any connection of this information

to the undisclosed purpose of this docket. The subpoena provides absolutely no justification for the requirement that American Dial Tone expend time and resources on a request that would encompass thousands of customers.

22. In addition, as noted above, the request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware.

23. Finally, American Dial Tone objects to producing the requested documents because documents concerning Lifeline matters, in Florida and outside Florida, are matters of federal law outside of this Commission's jurisdiction.

24. American Dial Tone also objects to the extent this request seeks information beyond Florida.

25. American Dial Tone also objects because this request seeks confidential proprietary customer information.

Request No. 2

26. Request No. 2 seeks copies of Lifeline certification records for all Lifeline customers. The request is overly broad, burdensome and oppressive. The request is burdensome as it would require extensive work on the part of American Dial Tone to collect and provide the information requested. To respond to this request would require an individual representing American Dial Tone to travel to Dunedin, Florida and make copies of each form. American Dial Tone is required to keep the original hard copy filed at the physical location at all times. The approximate man hours for this would be in excess of 100 man hours with a cost of approximately \$4,000 (man hours + copy charge + travel expense). Such a request is particularly burdensome and oppressive in light of the lack of any connection of this information to the undisclosed purpose of this docket. The subpoena provides absolutely no justification for the

requirement that American Dial Tone expend time and resources on a request that would encompass thousands of customers.

27. Further, as noted above, the request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware. This request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

28. Finally, American Dial Tone objects to producing the requested documents because documents concerning Lifeline matters are matters of federal law outside of this Commission's jurisdiction.

29. American Dial Tone also objects to the extent this request seeks information beyond Florida.

30. American Dial Tone also objects because this request seeks confidential proprietary customer information.

Request No. 3

31. Request No. 3 seeks copies of termination to Lifeline subscribers. The request is overly broad, burdensome and oppressive. The request is burdensome because it is not limited in by time frame. Further, it would require extensive work on the part of American Dial Tone to collect and provide the information requested. American Dial Tone does not send out notices due to the nature of the services provided to customers. American Dial Tone is a prepaid service provider and in lieu of notices, American Dial Tone sends out invoices indicating the past due balance and failure to pay such balance will result in the amount of prepaid service expiring consistent with the tariff. Such a request is particularly burdensome and oppressive in light of the lack of any connection of this information to the undisclosed purpose of this docket. The

subpoena provides absolutely no justification for the requirement that American Dial Tone expend time and resources on a request that would divert the company's resources.

32. Further, as noted above, the request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware. This request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

33. Finally, to the extent this request seeks documents related to American Dial Tone's operations as an ETC, such operations are governed by federal law and beyond the Commission's jurisdiction.

34. American Dial Tone also objects to the extent this request seeks information beyond Florida.

Request No. 4

35. Request No. 4 asks American Dial Tone to conduct an analysis of how many Lifeline subscribers provided proof of eligibility after receiving a termination letter. As a preliminary matter, the request to compile a list of customers as requested is not cognizable within a subpoena duces tecum without deposition which is a request to produce documents. This would require the creation of information and thus is not a proper request for a subpoena duces tecum.

36. The request is burdensome because it is not limited in by time frame. Further, it would require extensive work on the part of American Dial Tone to collect and provide the information requested. American Dial Tone does not send a letter to subscribers regarding pending termination. American Dial Tone is compliant with the state requirements that it obtain proof of eligibility from the requisite sampling of customers. To provide the information

requested would require an individual representing American Dial Tone to travel to Dunedin, Florida and make copies of each form. American Dial Tone is required to keep the original hard copy filed at the physical location at all times. The approximate man hours for this would be in excess of 100 man hours with a cost of approximately \$4,000 (man hours + copy charge + travel expense).

37. Such a request is particularly burdensome and oppressive in light of the lack of any connection of this information to the undisclosed purpose of this docket. The subpoena provides absolutely no justification for the requirement that American Dial Tone expend time and resources on a request that would divert the company's resources.

38. Further, as noted above, the request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware. This request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

39. Finally, to the extent this request seeks documents related to American Dial Tone's operations as an ETC, such operations are governed by federal law and beyond the Commission's jurisdiction.

Request No. 5

40. Request No. 5 asks for all brochures, pamphlets, or other materials provided to any state or federal agency. The request goes on to ask for a list of all state and federal agencies to which the materials were provided. American Dial Tone objects to request on several grounds.

41. First, the request is not limited in any way. The Commission lacks jurisdiction to subpoena the documents pertaining to information outside of Florida, such as that sought in this request. The Commission does not have jurisdiction over operations in states other than Florida

or as to matters concerning federal agencies nor the ability to request information as to agencies outside its jurisdiction. Thus, request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

42. Second, the request is burdensome because it is not limited in by time frame or scope. Further, it would require extensive work on the part of American Dial Tone to collect and provide the information requested. To respond to this request would require American Dial Tone to redact the materials not related to Florida, prepare for hearing for objections, to travel to Dunedin, Florida to pull each individual filing in each state or federal agency to locate any brochures, pamphlets and/or materials, copy each individual brochure, pamphlet or material and submit the items. This task would take approximately 80 man hours and cost an excess of \$2,500.00.

43. Such a request is particularly burdensome and oppressive in light of the lack of any connection of this information to the undisclosed purpose of this docket. The subpoena provides absolutely no justification for the requirement that American Dial Tone expend time and resources on a request that would divert the company's resources.

44. Finally, to the extent this request seeks documents related to American Dial Tone's operations as an ETC, such operations are governed by federal law and beyond the Commission's jurisdiction.

45. In addition, Staff's request to create a list of agencies to whom material was provided is not cognizable within a subpoena duces tecum without deposition which is a request to produce documents. This would require the creation of information and thus is not a proper request for a subpoena duces tecum.

Request No. 6

46. Request No. 6 asks American Dial Tone to create a list of customers, with telephone numbers, who received a Lifeline discount from January – May 2010. First, Staff's request to create a list of customers and their telephone numbers is not cognizable within a subpoena duces tecum without deposition which is a request to produce documents. This would require the creation of information and thus is not a proper request for a subpoena duces tecum.

47. Moreover, the request is and would require extensive work on the part of American Dial Tone to collect and provide the information requested. To respond to this request would require American Dial Tone to contact its database vendor, request information, review all customer information, redact all CPNI not related to Florida, prepare for hearing for objections, prepare the report, and review the report for accuracy. This would take approximately 45 man hours at a total cost of approximately \$1,000.00 plus costs from vendors and attorney fees.

48. Such a request is particularly burdensome and oppressive in light of the lack of any connection of this information to the undisclosed purpose of this docket. The subpoena provides absolutely no justification for the requirement that American Dial Tone expend time and resources on a request that would divert the company's resources.

49. Finally, to the extent this request seeks documents related to American Dial Tone's operations as an ETC, such operations are governed by federal law and beyond the Commission's jurisdiction.

Request No. 7

50. Request No. 7 seeks copies of all notices sent to customers terminated for nonpayment. The request is overly broad, burdensome and oppressive. The request is burdensome as it would require extensive work on the part of American Dial Tone to collect and

provide the information requested. American Dial Tone does not send out notices due to the nature of the services provided to customers. American Dial Tone is a prepaid service provider and in lieu of notices, American Dial Tone sends out invoices indicating the past due balance and failure to pay such balance will result in the amount of prepaid service expiring consistent with the tariff. Such a request is particularly burdensome and oppressive in light of the lack of any connection of this information to the undisclosed purpose of this docket. The subpoena provides absolutely no justification for the requirement that American Dial Tone expend time and resources on a request that would divert American Dial Tone's resources.

51. Further, as noted above, the request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware. This request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

52. Finally, American Dial Tone objects to producing the requested documents because documents concerning Lifeline matters are matters of federal law outside of this Commission's jurisdiction.

Request No. 8

53. Request No. 8 seeks the names of customers who have moved from American Dial Tone to another company and a copy of the authorization request. As a preliminary matter, the request to compile a list of customers who have changed providers is not cognizable within a subpoena duces tecum without deposition which is a request to produce documents. The first part of Request No. 8 requests American Dial Tone to provide a list of companies to whom a customer may have moved. This would require the creation of information and thus is not a proper request for a subpoena duces tecum.

54. Further, this portion of the request is burdensome as it would require extensive work on the part of American Dial Tone to collect and provide the information requested. To respond to this request would require American Dial Tone to send a representative to Dunedin, Florida to review all corporate information, contact the sales vendor to determine the form and manner of authorization, and run a line loss notification report which indicates which customers American Dial Tone has lost. American Dial Tone is not notified of who the customers went with for their new carrier; therefore extensive time would be involved to run the lost customer information through all ATMS subsidiaries data base against the loss notification report information. This request would take approximately 100 hours and cost an excess of \$3,000.00. Such a request is particularly burdensome and oppressive in light of the lack of any connection of this information to the undisclosed purpose of this docket. The subpoena provides absolutely no justification for the requirement that American Dial Tone expend time and resources on a request that would encompass thousands of customers.

55. Further, as noted above, the entire request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware. This request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

56. Finally, American Dial Tone objects to producing the requested documents because documents concerning Lifeline matters are matters of federal law outside of this Commission's jurisdiction.

Request No. 9

57. Request No. 9 seeks a copy of all corporate minutes of American Dial Tone, including stockholder and Board of Director meetings. American Dial Tone objects to this

request because it is over broad, oppressive and not limited in any way by subject matter. Again, since American Dial Tone does not know what is being investigated, it does not know what minutes, if any exist, might bear on the investigation. It is highly unlikely that *all* corporate minutes, if any, will have any bearing on this matter.

58. Further, as noted above, the entire request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware. This request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 10

59. Request No. 10 seeks American Dial Tone's federal and Florida state tax returns for the last two years. First, as with the other requests, American Dial Tone objects on the basis of relevance. There has been absolutely no showing made that American Dial Tone's federal and state income tax returns are relevant in any way to this proceeding.²

60. American Dial Tone further objects to this request as it is over broad, oppressive and harassing. No showing has been made as to what income tax returns might have to do with this matter and American Dial Tone vehemently objects to being required to produce such highly sensitive documents without a compelling showing from Staff that such documents are relevant to the matter at issue, which has yet to be identified.

² Income tax returns are subject to production *only* if they are relevant. *Cabanas v. Ford, Armenteros, Manucy, Inc.*, 727 So.2d 1100, 1102 (Fla. 3rd DCA 1999).

61. Further, since American Dial Tone does not know what is being investigated, it does not know how or in what way its income tax returns might have any bearing on any matter within the Commission's jurisdiction. It is highly unlikely that such returns will have any bearing on this matter.

62. Last, as noted above, the entire request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware. This request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 11

63. Request No. 11 seeks information about American Dial Tone employees, officers, directors and owners. The request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware. This request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

64. American Dial Tone further objects because such information as to American Dial Tone employees, in particular, because it is irrelevant, unduly burdensome, not likely to lead to the discovery of admissible evidence, and an invasion of the privacy interests and rights of those employees.

Request No. 12

65. Request No. 12 seeks copies of all Lifeline advertising for January – May 2010. The request is overly broad, burdensome and oppressive. The request is burdensome as it would require extensive work on the part of American Dial Tone to collect and provide the information requested. To respond to this request would require American Dial Tone to redact all

advertisements requested outside the state of Florida, prepare for hearing for objections, and contact vendors for the information requested. This would require a minimum of 32 hours cost approximately \$1,600 plus the cost for copies in multimedia formats. Such a request is particularly burdensome and oppressive in light of the lack of any connection of this information to the undisclosed purpose of this docket. The subpoena provides absolutely no justification for the requirement that American Dial Tone expend time and resources on a request that would divert the company's resources.

66. Further, as noted above, the request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware. This request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

67. Finally, to the extent this request seeks documents related to American Dial Tone's operations as an ETC, such operations are governed by federal law and beyond the Commission's jurisdiction.

Request No. 13

68. Request No. 13 seeks all 499-A and 499-Q forms filed by American Dial Tone for the past two and one half years. The request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware. This request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

69. Further, the request appears to seek documents from outside of Florida. Such a request is beyond the Commission's jurisdiction.

70. American Dial Tone further objects to producing the requested documents because documents concerning the Universal Service Administrative Company, in Florida and outside Florida, are matters of federal law outside of this Commission's jurisdiction.

Request No. 14

71. Request No. 14 seeks copies of any outside auditor reports and opinions for the last year. American Dial Tone objects to this request as it is over broad, oppressive and in no way limited by subject matter. Again, since American Dial Tone does not know what is being investigated, it does not know what auditor reports or opinions, if any, and if any such reports exist, might bear on the investigation. It is highly unlikely that all such reports and minutes, if any, will have any bearing on this matter.

72. The request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware. This request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 15

73. Request No. 15 seeks copies of purchase agreements between other entities and American Dial Tone. This request is overbroad and oppressive as it is not limited in any way in time or scope.

74. Such a request is also objectionable because it seeks highly confidential proprietary business information which is irrelevant to any matters within the Commission's jurisdiction.

75. Further, the request seeks irrelevant information because it is not related to any facts or allegations of which American Dial Tone is aware. And, it is difficult to envision how

such documents have any relevance or relation to any matter within the Commission's jurisdiction.

76. Finally, this request seeks information irrelevant to these proceedings and not reasonably calculated to lead to the discovery of admissible evidence.

Conclusion

77. As described in detail above, the very broad requests contained in the American Dial Tone subpoena are irrelevant, overbroad, burdensome, oppressive and harassing. This is particularly the case in light of the fact that American Dial Tone has not in any way been apprised of the subject matter which the Commission Staff seeks to investigate. It is inappropriate for a subpoena to be issued which has no relation to delineated matters under consideration by the Commission. Such a subpoena forces the entity receiving the subpoena to guess at what the subject matter of concern may be and violates fundamental due process rights to be apprised of allegations concerning it.

78. Nonetheless, American Dial Tone is committed to cooperating with the Commission Staff when it is apprised of and fully understands exactly what the subject matter of this docket is and can determine which documents pertain to such subject matter.

79. American Dial Tone further suggests that a meeting with Commission Staff would be a productive first step to understanding Staff's concerns, working with Staff to narrow the documents requested, and resolving any potential issues. American Dial Tone stands fully ready to participate promptly in such a meeting.

WHEREFORE, American Dial Tone requests that the Commission enter an order quashing the American Dial Tone subpoena in its entirety.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Motion to Quash has been furnished by electronic mail and US Mail this 29th day of July 2010 to the following:

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s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman