

Marguerite McLean

000121A-TP

From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Wednesday, September 22, 2010 3:50 PM
To: Filings@psc.state.fl.us
Subject: 000121A-TP AT&T Florida's Response in Opposition to FCTA's Motion to Clarify Order No. PSC-10-1545-PAA-TP
Attachments: Document.pdf

A. Vickie Woods

Legal Secretary to E. Earl Edenfield, Jr., Tracy W. Hatch,

and Manuel A. Gurdian

BellSouth Telecommunications, Inc. d/b/a AT&T Florida

150 South Monroe, Rm. 400

Tallahassee, FL 32301-1558

(305) 347-5560

vf1979@att.com

B. Docket No. 000121A-TP: In Re: Investigation into the Establishment of Operations Support Systems Permanent Incumbent Local Exchange Telecommunications Companies.

C. BellSouth Telecommunications, Inc.

on behalf of Tracy W. Hatch

D. 7 pages total in PDF format (Letter, Certificate and Response)

E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response in Opposition to FCTA'S Motion to Clarify Order No. PSC-10-1545-PAA-TP

.pdf

<<Document.pdf>>

9/22/2010

DOCUMENT NUMBER DATE

07951 SEP 22 2010

FPSC-00-010301-0101



Tracy W. Hatch
General Attorney

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: (850) 577-5508
thatch@att.com

September 22, 2010

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

Re: Docket No. 000121A-TP

In Re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange Telecommunications companies (BellSouth Track)

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response in Opposition to FCTA'S Motion to Clarify Order No. PSC-10-1545-PAA-TP, 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,


Tracy W. Hatch

Enclosures

cc: All parties of record
Jerry D. Hendrix
Gregory R. Follensbee
E. Earl Edenfield, Jr.

CERTIFICATE OF SERVICE
Docket No. 000121A-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and U.S. Mail this 22nd day of September, 2010 to the following:

Adam Teitzman
Staff Counsel
Lisa Harvey
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6175
Fax. No. (850) 413-6250
ateitzma@psc.state.fl.us
lsharvey@psc.state.fl.us

Jerry Hallenstein
Florida Public Service
Commission Staff
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6818
jhallens@psc.state.fl.us

David Rich
Florida Public Service
Commission Staff
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6830
drich@psc.state.fl.us

Howard E. (Gene) Adams
Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A.
Post Office Box 10095 (32302)
215 South Monroe Street, 2nd Floor
Tallahassee, FL 32301
Tel. No. (850) 222-3533
Fax. No. (850) 222-2126
gene@penningtonlawfirm.com
Represents Time Warner

David Konuch
Senior Counsel
Regulatory Law & Technology
Florida Cable Telecomm. Assoc.
246 East 6th Avenue
Tallahassee, FL 32303
Tel. No. (850) 681-1990
Fax. No. (850) 681-9676
dkonuch@fcta.com

Douglas C. Nelson
Sprint Nextel
233 Peachtree Street, NE
Suite 2200
Atlanta, GA 30303
Tel. No. 404 649-0003
Fax No. 404 649-0009
douglas.c.nelson@sprint.com

Vicki Gordon Kaufman
Keefe Anchors Gordon & Moyle P.A.
The Perkins House
118 N. Gadsden St.
Tallahassee, FL 32301
Tel. No. (850) 681-3828
Fax. No. (850) 681-8788
ykaufman@kagmlaw.com
Represents Cebyond
Represents Deltacom

Dulaney O'Roark III (+)
Vice Pres. & Gen. Counsel – SE Region
Verizon
5055 N Point Parkway
Alpharetta, GA 30022
Tel. No. (678) 259-1449
Fax No. (678) 259-1589
De.OROark@verizon.com

D. Anthony Mastando
DeltaCom
VP-Regulatory Affairs
Senior Regulatory Counsel
Ste 400
7037 Old Madison Pike
Huntsville, AL 35806
Tel. No. (256) 382-3856
Fax No. (256) 382-3936
tony.mastando@deltacom.com

Beth Keating
Akerman Law Firm
106 East College Avenue
Suite 1200
Tallahassee, FL 32301
beth.keating@akerman.com

Ms. Katherine K. Mudge
Covad Communications Company
7000 N. MoPac Expressway, Floor 2
Austin, TX 78731
Tel. No. (512) 514-6380
Fax No. (512) 514-6520
kmudge@covad.com

Cbeyond Communications, LLC
Charles E. (Gene) Watkins
320 Interstate North Parkway
Suite 30
Atlanta, GA 30339
Tel. No. (678) 370-2174
Fax No. (978) 424-2500
gene.watkins@cbeyond.net

Time Warner
Carolyn Ridley
555 Church Street, Ste. 2300
Nashville, TN 37219
Tel. No. (615) 376-6404
Fax. No. (615) 376-6405
carolyn.ridley@twtelecom.com

Susan J Berlin
NuVox
2 N Main St
Greenville, Sc 29601
Tel No (864) 331 7323
sberlin@nuvox.com

Matthew J. Feil
Akerman Senterfitt
106 East College Avenue
Suite 1200
Tallahassee, FL 32301
Tel. No. (850) 224-9634
matt.feil@akerman.com
Represents CompSouth/Nuvox

Law Offices of Alan C. Gold, P.A.
Alan Gold
1501 Sunset Drive Second Floor
Coral Gables, FL 33143
Tel. No. (305) 667-0475
Fax. No. (305) 663-0799
agold@acgoldlaw.com
Represents STS



Tracy W. Hatch

(+) Signed Protective Agreement

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the Establishment)
of Operations Support System Permanent) Docket No. 000121A-TP
Performance Measures for Incumbent)
Local Exchange Telecommunications) Filed: September 22, 2010
Companies (BellSouth Track))
_____)

**AT&T FLORIDA'S RESPONSE IN OPPOSITION TO
FCTA'S "MOTION TO CLARIFY ORDER NO. PSC-10-1545-PAA-TP"**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), pursuant to Rule 28-106.204, Florida Administrative Code, hereby files this Response in Opposition to Florida Cable Telecommunications Association's ("FCTA") "Motion To Clarify Order No. PSC-10-1545-PAA-TP" ("Motion") filed September 15, 2010 and in support thereof states:

1. FCTA's Motion seeks a declaration that FCTA and its members are not signatories to the Settlement Agreement between AT&T Florida and the Competitive Carriers of the South ("CompSouth") and, presumably, the Settlement Agreement between AT&T Florida and Saturn Telecommunications Service, Inc. ("STS"). FCTA's Motion further asks for a declaration that the "Settlement Agreement approved by the Commission does not apply, govern, or control the FCTA or its members."

2. For both substantive and procedural reasons, FCTA's Motion should be denied.

3. On August 25, 2010, the Florida Public Service Commission issued its Order No. PSC-10-0545-PAA-TP ("Order No. 10-0545 or PAA Order") approving the Second Revised SQM and SEEM Plans. The Order was issued as a Notice of Proposed Agency Action ("PAA"). As noted by FCTA, the staff recommendation upon which the PAA Order is based was addressed and approved by the Commission at the Commission's August 17, 2010 Agenda Conference. Notwithstanding, the fact that the staff recommendation was on the "move staff"

RECEIVED MEMBER DATE

7951 SEP 22 e

FPSC-COMMISSION CLERK

list, FCTA had a right and a ample opportunity at the August 17th Agenda Conference to address the Commission regarding any issue it may have had with the staff recommendation, including the clarification that it now seeks. FCTA failed to avail itself of this opportunity.

4. Once issued, a PAA order is susceptible to modification only through one of two mechanisms: 1) in accordance with the PAA Order's terms¹, the party seeking modification or alteration of the PAA Order may file a petition for formal proceeding i.e. a "protest"² or 2) the Commission on its own motion may withdraw the PAA Order before the order becomes final. Neither event occurred in this instance.

5. FCTA's Motion is not and cannot be treated as a protest of the PAA Order. The Motion expressly states that FCTA has no objection to the approval and implementation of the Second Revised SQM and SEEM Plans which is the only substantive action contemplated by the Order and FCTA admits that its "motion is not a formal protest of the order". See Motion at 4 and FCTA's September 15, 2010 letter to the Commission. Moreover, even if it was a "protest", the Motion does not comply with the provisions required to initiate a formal proceeding either under Rules 25-22.036 or 28-106.201³, Florida Administrative Code. As a result, FCTA's Motion must be denied as a "protest" intended to effectuate any change to the PAA Order.

¹ See "Notice of Further Proceedings or Judicial Review" See PAA Order, p. 8

² FCTA admits that its Motion is not a protest of the PAA Order. See September 15, 2010 letter to Commission filed with Motion ("FCTA's motion is not a formal protest of the order").

³ Rule 28-106.201(2) states that "[a]ll petitions filed under these rules shall contain:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or

5. In addition, neither the Model Rules of Procedure nor the Commission's procedural rules provide for motions for clarification of orders of the Commission. The Commission typically treats motions for clarification of its Orders in the same manner as motions for reconsideration.⁴ Based on the Commission's standards for reconsideration, FCTA's Motion is procedurally and substantively defective. First, Motions for Reconsideration must be filed within 15 days after the Order for which reconsideration is sought is issued. Rule 25-22.060(3), Florida Administrative Code. FCTA's Motion was filed on September 15, 2010, 21 days after the issuance of the Order No. 10-1545. Second, Rule 25-22.060(1)(d), Florida Administrative Code, clearly states that the Commission will not entertain Motions for Reconsideration of a Notice of Proposed Agency Action. Accordingly, FCTA's Motion must be denied for these procedural reasons as well.

6. Notwithstanding its procedural problems, FCTA's Motion also fails to meet the Commission's oft stated standard for reconsideration⁵, as FCTA fails to point to any error of fact or law upon which reconsideration or clarification can be grounded. As a result, FCTA's motion must also be denied on substantive grounds as well.

statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

FCTA's Motion clearly fails to meet the requirements of Rule 106.201.

⁴ See e.g. Order PSC-01-2449-FOF-TP, issued December 14, 2001 in Docket 000121A.

⁵ "Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order." The standard of review for a Motion for Reconsideration is whether the motion identifies a point of fact or law which was overlooked or which we failed to consider in rendering our Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc., at 317. See Order PSC-01-2449-FOF-TP, p. 2.

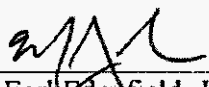
7. Finally and most importantly, the matters for which FCTA seeks a declaration from the Commission are simply self-evident and no clarification is needed. It is clear from the record that FCTA and its members are not signatories to either the CompSouth Settlement Agreement or the STS Settlement Agreement; nor has anyone made any such allegation. See CompSouth and STS Settlement Agreements filed in Docket No. 000121A-TP. No clarification on that matter is needed in any way. Moreover, no declaration is needed that the Settlement Agreement between AT&T Florida and CompSouth (as well as the agreement with STS) does not govern FCTA or its members. Accordingly, no clarification is needed and FCTA's Motion should be summarily denied.

8. Moreover, to the extent that FCTA is concerned about its members in other states, it is equally self-evident that the Commission's orders do not bind or govern them as to their behaviors in other states under the jurisdiction of other states' commissions. Certainly no declaration on this point is needed.

WHEREFORE, for the forgoing reasons, AT&T Florida respectfully requests that the Motion for Clarification of Order No. PSC-10-1545-PAA-TP be denied.

Respectfully submitted this 22nd day of September, 2010.

AT&T FLORIDA



E. Earl Edenfield, Jr.
Tracy W. Hatch
Manuel A. Gurdian
c/o Gregory R. Follensbee
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301

852553