



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

May 4, 2015

Re: Docket No.: 140156-TP: Motion to Disqualify and Recuse

Dear Ms. Stauffer:

Pursuant to request from Staff, enclosed is Communication Authority, Inc.'s Motion to Disqualify and Recuse Commissioner Patronis, which we ask that you file in the captioned docket. Electronic copies have been served to the Parties shown on the attached Certificate of Service.

Respectfully submitted,

_____/s/_____
Kristopher E. Twomey
Counsel to Communications Authority, Inc.

cc: All Parties of Record
Mike Ray

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Re: Petition for Arbitration of Interconnection)
Agreement Between BellSouth Telecommunications,)
LLC d/b/a AT&T Florida and Communications) Docket 140156-TP
Authority, Inc.)

COMMUNICATION AUTHORITY, INC.’S MOTION TO DISQUALIFY AND RECUSE

Communications Authority, Inc. (“CA”), moves to disqualify Commissioner Jimmy Patronis from participating as a member of the Public Service Commission (“Commission”) in PSC hearings, deliberations, decision-making, or acting in any other capacity in this docket. CA hereby files this Motion to Disqualify and Recuse (“Motion”) Commissioner Patronis from proceedings and deliberations in this docket. CA believes that given the Commissioner’s ties to AT&T and the American Legislative Exchange Council (“ALEC”) that his potential bias in favor of AT&T should disqualify him from participating on the panel in the hearing scheduled for May 6-8 and any further deliberations in this docket. CA requests Commissioner Patronis voluntarily disqualify himself from this proceeding and the Commission should appoint an alternative commissioner as the third hearing officer. CA does not have any concerns with the other appointed members of the panel, nor with the other Commissioners as potential replacements.

Although CA is filing this as soon as was possible given the release date of the appointments to the hearing panel, CA appreciates that more time may be necessary to determine a replacement. Although it would prefer to continue with the current schedule, if necessary CA suggests the hearing could be delayed and any other necessary changes to the procedural schedule should be discussed and agreed between the parties and the Commission.

Factual Background

1. Mr. Patronis served as a Representative to the Florida State Assembly for District 6 from 2006-2014. During his campaigns for the four biannual elections, AT&T provided seven \$500 campaign contributions totaling \$3,500.¹

2. Upon information and belief, Mr. Patronis has served and may presently serve as the Florida State Chairman of the American Legislative Exchange Council (“ALEC”).²

3. AT&T is a corporate board member of ALEC³ and has been extremely active with the group. According to a National Regulatory Research Report, twenty-five states have passed legislation that limits, or entirely erases, state utility commission regulation over telecommunications. ALEC’s “Communications and Technology Task Force created model state legislation for this purpose.”⁴

4. According to a news article, while a state representative, Mr. Patronis said “he values the conservative group because it allows him to share good ideas with other lawmakers from Southern states.”

5. In 2011, the Florida legislature passed the “Regulatory Reform Act,” a deregulatory law entirely based on two types of ALEC model legislation,⁵ “The Advanced Services Availability Act,”⁶ and the “ALEC Regulatory Modernization Act.”⁷ At that time, Mr. Patronis

¹ See, <http://projects.propublica.org/alec-contributions/candidates/59.html>

² http://www.sourcewatch.org/index.php/Jimmy_Patronis#cite_note-2, see also, <http://www.seattletimes.com/nation-world/major-corporations-drop-support-of-stand-your-ground-group/>. See <http://dbapress.com/source-materials-archive/publicopoly-alec-and-the-bid-to-make-private-all-that-is-public-source-materials-directory/records-obtained-from-florida-for-a-series-of-records-obtained-pursuant-to-a-public-records-request-detailing-mr-patronis-ties-to-alec>.

³ See, http://www.sourcewatch.org/index.php/ALEC_Corporations

⁴ For a full discussion of ALEC’s telecommunications de-regulation efforts, see, http://www.huffingtonpost.com/bruce-kushnick/alec-your-communications-_b_3287860.html See also, “How ALEC Helps Big Telecom Change State Laws for Corporate Gain.”

⁵ See, http://alecexposed.org/w/images/c/c5/9A5-Broadband_and_Telecommunications_Deployment_Act_exposed.pdf, see also, <http://www.alec.org/legislation-tags/telecommunications/>

⁶ http://alecexposed.org/w/images/8/82/9A0-Advanced_Voice_Services_Availability_Act_of_2007_Exposed.pdf

was the Florida State Chairman of ALEC.

Argument

This Motion is Timely

As a threshold matter regarding timeliness, the decision in Bay Bank & Trust Company v. Lewis, 634 So.2d 672 (1st DCA 1994), requires a movant to file a motion for recusal within a reasonable time prior to the agency proceeding. Upon information and belief, the identity of the panelists that would be joining Commissioner Brisé at the hearing was not posted to the Commission's website until May 1, 2015, less than a week before the hearings are scheduled to begin. Moreover, the Commission did not notify the service list of the panelists' appointments. CA's motion is filed on the first business day after the appointments were made public and two days before the hearing is scheduled to begin. CA's motion is timely because it was filed as soon as possible, on the next business day, and in advance of the hearing.⁸ CA is willing to postpone the hearing in order for the Commission to consider this Motion and/or for any practical reasons. CA is also willing to proceed with the hearings scheduled for May 6-8 if the Commission can quickly appoint an alternative panelist. Upon considering such a motion, the Commission must assume the truth of the facts alleged. CA has provided extensive citation for its factual section and, in any event, much of the facts are public knowledge.

Members of the PSC perform a judicial function and are bound by the fundamental requirement of judges to maintain both the reality and the appearance of absolute impartiality in the conduct of their fact-finding duties. In the context of an administrative proceeding, as in any

⁷ http://alecexposed.org/w/images/8/82/9A0-Advanced_Voice_Services_Availability_Act_of_2007_Exposed.pdf

⁸ This filing is thus distinguished from Supra's Motion for Recusal filed in its BellSouth arbitration proceeding in Docket No. 001305-TP, "In re: Petition by BellSouth Telecommunications, Inc. for arbitration of certain issues in interconnection agreement with Supra Telecommunications and Information Systems, Inc." See, <http://www.psc.state.fl.us/library/filings/02%5C06092-02%5C06092-02.PDF>.

adjudicative proceeding, the right to an impartial decision-maker is a basic component of minimum due process. *Cherry Communications v. Deason*, 652 So. 2d 803 (Fla. 1995) (In the administrative context, “an impartial decision-maker is a basic constituent of due process.”)

Legal Standard

The legal standard for recusal of an administrative agency panel member is contained in Florida Statutes §102.665(1), Disqualification of agency personnel:

Notwithstanding the provisions of s. 112.3143, any individual serving alone or with others as an agency head may be disqualified from serving in an agency proceeding for bias, prejudice, or interest when any party to the agency proceeding shows just cause by a suggestion filed within a reasonable period of time prior to the agency proceeding. If the disqualified individual was appointed, the appointing power may appoint a substitute to serve in the matter from which the individual is disqualified. If the individual is an elected official, the Governor may appoint a substitute to serve in the matter from which the individual is disqualified. However, if a quorum remains after the individual is disqualified, it shall not be necessary to appoint a substitute.

Just cause may be demonstrated when the facts alleged would prompt a reasonably prudent person to fear that they will not obtain a fair and impartial hearing. *Charlotte v. Broward Co.*, 824 So. 2d 298, 300 (Fla. 1st DCA 2002). Furthermore, it is not a question of how the judge (or Commissioner in this case) actually feels, but what feeling resides in the movant’s mind and the basis for such feeling. The judge may not pass on the truth of the allegations of fact, and countervailing evidence is not admissible. In other words, the judge or commissioner does not, in fact, have to be biased or prejudiced. Rather, the outcome must turn on the reasonableness of the affiant's belief that the Hearing Officer is prejudiced and the sufficiency of the attested facts supporting the suggestion of prejudice. *Mt. Sinai Medical Center v. Brown*, 493 So.2d 512 12 (Fla. 1st DCA 1986).

Finally, CA notes that Chapter 350.041(2)(h), of the Florida statutes, which establishes standard of conduct parameters for commissioners states:

A commissioner must avoid impropriety in all of his or her activities and must act at all times in a manner that promotes public confidence in the integrity and impartiality of the commission.

Mr. Patronis' Ties to AT&T Create Perception of Bias

CA has no personal quarrel with Mr. Patronis and applauds his dedication to public service in Florida. Given his direct ties to AT&T and ALEC, however, CA fears his objectivity for this case will be compromised. Mr. Patronis received campaign funds from AT&T on seven different occasions assisting him in reaching elective office in four elections. Should Mr. Patronis seek political office again, it is reasonable to assume that he would seek donations from his prior contributors, including AT&T. Given the direct financial ties alone between Mr. Patronis and AT&T, CA argues its ability to receive a fair hearing is compromised.

Additionally, however, CA argues that Mr. Patronis' ties to ALEC stand as a second, separate ground for his recusal. According to ALEC's promotional material, ALEC's mission is to "advance the Jeffersonian principles of free markets, limited government, federalism, and individual liberty, through a nonpartisan public-private partnership of America's state legislators, members of the private sector, the federal government, and general public."⁹ ALEC currently claims 250 corporations and special interest groups as private sector members, including AT&T as a member of its Telecommunications and Information technology Task Force. Task forces are also comprised of elected lawmakers. These task forces operate as the core of ALEC and generate "model legislation" to be passed on to fellow lawmakers to introduce in their legislatures. ALEC claims that 1,000 pieces of its model legislation are

⁹ <http://www.prwatch.org/news/2011/08/10944/publicopoly-alec-and-bid-make-private-all-public>

introduced annually across the country.¹⁰ ALEC's corporate members also contribute to each state's "scholarship fund" that reimburses legislators for travel to meetings. ALEC issues \$1 million in scholarship funds annually to send legislators to resorts to discuss introducing model legislation.

ALEC is essentially a network of like-minded lawmakers that seek to promote model legislation created by its corporate supporters. Mr. Patronis served as the Florida Chairman for ALEC while AT&T was a board member of ALEC. AT&T contributed \$100,000 to ALEC to become a "president level sponsor," the highest level of sponsorship offered by ALEC.¹¹ State chairs of ALEC have been called the "backbone and heartbeat" of the organization. Emails produced via a Public Records Request show Mr. Patronis' office spent much time recruiting and managing fellow lawmakers to further ALEC's goals.¹²

During his time in office, and while Mr. Patronis was ALEC's Florida state chairman, ALEC's supporters in the legislature helped push its model telecommunications deregulation statutes into Florida law. The legislation stripped the Commission of its regulatory oversight of almost all of AT&T Florida's activities. At this time, the Commission's last remaining bit of regulatory oversight of the telecommunications industry includes carrier to carrier disputes such as the arbitration in this docket.

CA does not argue that Commissioner Patronis' activities on ALEC's behalf are illegal or improper. In fact, ALEC is entirely legal and very effective. Mr. Patronis' ties to ALEC, however, suggest an aversion to Commission regulation of telecommunications. This qualifies as an "adverse posture" consistent with World Transportation, Inc. v. Central Florida Regional

¹⁰ *Id.*

¹¹ See, <http://www.bloomberg.com/bw/magazine/pssst-wanna-buy-a-law-12012011.html#p2>

¹² <http://dbapress.com/source-materials-archive/publicopoly-alec-and-the-bid-to-make-private-all-that-is-public-source-materials-directory/records-obtained-from-florida>

Transportation, 641 So. 2d 913 (Fla. 5th DCA 1994). CA argues this adverse posture will prevent Mr. Patronis from fairly adjudicating the issues raised in this docket. CA believes a positive outcome in this docket is critical to future competition in the Florida telecommunications market. The public would best be served by completely unbiased consideration by the Commission of the issues raised in this docket.

Conclusion

The evidence contained in this Motion clearly demonstrates that a reasonably prudent person in CA's position would fear that he or she would not receive a fair and impartial hearing from Commissioner Patronis. Disqualification is therefore proper and necessary under Florida law.

WHEREFORE, CA respectfully requests a) that Commissioner Patronis rule on this Motion prior to participation in the Commission hearing scheduled for this docket and before any deliberations, decision-making, or acting in any other capacity for this docket, b) that this Motion be granted; and c) that a conference call be scheduled by the Commission with the parties to discuss alternative hearing dates and other changes to the procedural schedule if necessary.

Respectfully submitted this 4th day of May, 2015.

By: /s/
Kristopher E. Twomey
Attorney for Communications Authority, Inc.