

Ruth Nettles

090430-TP

From: Woods, Vickie [vf1979@att.com]
Sent: Tuesday, September 22, 2009 3:28 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: Untitled.pdf

- A. Vickie Woods
BellSouth Telecommunications, Inc. d/b/a AT&T Florida
150 South Monroe Street
Suite 400
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 E. Earl Edenfield, Jr.
- D. 17 pages total (includes letter, pleading and certificate of service)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Partial Motion to Dismiss and Answer and Affirmative Defenses

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E. Earl Edenfield, Jr.
General Counsel - FL

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

T: (305) 347-5558
F: (305) 577-4491
kjp.edenfield@att.com

September 22, 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,


E. Earl Edenfield

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 22nd day of September, 2009 to the following:

Timisha Brooks
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6212
tbrooks@psc.state.fl.us

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

STS Telecom
Mr. Keith Kramer
P. O. Box 822270
Pembroke Pines, FL 33082-2270
Tel. No. (954) 252-1003
Fax No. (786) 363-0103
kkramer@ststelecom.com



E. Earl Edenfield, Jr.

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: September 22, 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 for Stay of AT&T's CLEC OSS-Related Releases ("Petition") filed by Saturn Telecommunication Services, Inc. ("STS"), and says:

INTRODUCTION

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 will attempt to address some of the (unfounded) concerns raised by STS.

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

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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 give the 9-state CLECs time to adequately learn the new 22-state LEX interface without disrupting ongoing operations, AT&T will keep the existing LENS ordering interface operational until March 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.

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 has never been utilized by a CLEC (not even in testing at this point), AT&T is perplexed at how STS manages to state facts and draw conclusions about the capabilities of the upcoming 22-state LEX interface. 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.

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 order 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 *ad damnum* clause of the Petition for “[a]n order that this Commission restrain AT&T from implementing the AT&T 22-State OSS Alignment in November 2009.” 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.

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.”).

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 (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 Attorneys’ Fees and Costs

STS requests in the *ad damnum* section of the Petition for “[a]n order for attorneys’ fees if applicable, costs and for such other relief as the Commission deems just and appropriate.” To the extent that Petitioner has requested attorneys’ fees and costs in its Petition, AT&T Florida requests that this portion of the Petition be dismissed or stricken.

The Commission has no jurisdiction to award attorney fees as requested in the Petition. *See e.g., In re: Complaint and petition of John Charles Heekin against Florida Power & Light Company*, Docket No. 981923-EI, Order No. PSC-99-1054-FOF-EI (May 24, 1999) (dismissing petition requesting attorney fees for lack of subject matter jurisdiction); *In re: Complaint by Florida BellSouth customers who paid fees to BellSouth Telecommunications, Inc. related to the Miami-Dade County Ordinance 21-44 and request that Florida Public Service Commission order BellSouth to comply with Section A2.4.6 of General Subscriber Service Tariff and refund all fees collected in violation thereof*. Docket No. 050194-TL, Order No. PSC-05-0762-PCO-TL (Issued July 25, 2005) (“we acknowledge a lack of subject matter jurisdiction to award attorney’s fees.”); *G.E.L. Corp. v. Dep’t of Environ. Protection*, 875 So. 2d 1257, 1263-64 (Fla. 5th DCA

2004) (state agencies do not have substantive jurisdiction over legal issues relating to attorney fees authorized by section 120.595, Florida Statutes). 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.”). *See also 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 (“we find no statutory authority for the Commission to assess costs against the applicants and to award the protestant its costs and attorneys’ fees.”).

State agencies, including the Commission, follow the “American rule” that is applied in judicial proceedings, which holds that attorney fees may be awarded by a court only when authorized by statute or agreement of the parties. *Werthman v. School Board of Seminole County*, 599 So. 2d 220 (Fla. 5th DCA 1992); *In re: Application for a Rate Increase in Marion County by Sunshine Utilities of Central Florida, Inc.*, Docket No. 900386-WU, Order No. PSC-94-0738-FOF-WU (June 15, 1994) (“In terms of utility regulation, any authority to award attorney fees must come from the statute creating the utility regulatory body.”)

The Petition cites no statute or contractual basis that authorizes the Commission to award attorney fees or costs. In addition, the Petition requests relief that the Commission has no authority to provide. Thus, the portion of the Petition seeking attorney fees and costs 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. 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 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 contends that the referenced Statutes 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 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 23 of the Petition are denied.

24. AT&T denies the allegations in Paragraph 24 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 24 of the Petition are denied.

25. AT&T contends that the referenced Rules, 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 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 25 of the Petition are denied.

26. AT&T contends that the referenced Statutes and statutory language speak for themselves and that Paragraph 26 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 26 of the Petition are denied.

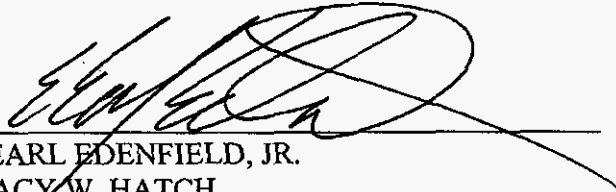
27. AT&T denies that STS is entitled to any relief in this Petition. Further, the Commission cannot grant the relief requested because: (a) the Commission lacks the requisite jurisdiction and/or (b) STS has failed to demonstrate that it is entitled to any relief. Therefore, any claims for relief should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

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 22nd day of September, 2009.



E. EARL EDENFIELD, JR.
TRACY W. HATCH
MANUEL A. GURDIAN
c/o Gregory R. Follensbee
AT&T Southeast Legal Dept.
150 South Monroe Street, Ste. 400
Tallahassee, FL 33130
Telephone: (305) 347-5561
Facsimile: (305) 577-4491
Email: mg2708@att.com

ATTORNEYS FOR BELLSOUTH
TELECOMMUNICATIONS, INC. d/b/a
AT&T FLORIDA

743153