

Marguerite McLean

090430-TP

From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Thursday, April 15, 2010 3:47 PM
To: Filings@psc.state.fl.us
Subject: 090430-TP AT&T Florida's Resp. in Opp. to Saturn's Motion to Continue Hearing on Staff's Rec Regarding the Retirement of LENS, and to Lift Abeyance in Order to Allow Discovery
Importance: High
Attachments: Untitled.pdf

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

on behalf of Manuel A. Gurdian
- D. 7 pages total (includes letter, pleading and certificate of service)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response in Opposition to Saturn's Motion to Continue Hearing on Staff's

Recommendation Regarding the Retirement of LENS, and to Lift Abeyance in Order to Allow Discovery

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April 15, 2010

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 Response in Opposition to Saturn's Motion to Continue Hearing on Staff's Recommendation Regarding the Retirement of LENS, and to Lift Abeyance in Order to Allow Discovery, which we ask that you file in the captioned docket.

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

Sincerely,

Manuel A. Gurdian

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


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 15th day of April, 2010 to the following:

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Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for verified emergency injunctive relief) Docket No. 090430-TP
and request for stay of AT&T's CLEC)
OSS-related releases by Saturn Telecommunication)
Services, Inc.)
_____) Filed: April 15, 2010

**AT&T FLORIDA'S RESPONSE IN OPPOSITION TO
STS'S MOTION TO CONTINUE HEARING ON STAFF'S
RECOMMENDATION REGARDING THE RETIREMENT OF LENS, AND TO
LIFT ABEYANCE IN ORDER TO ALLOW DISCOVERY**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") hereby files its Response in Opposition to Saturn Telecommunications Services, Inc.'s ("STS") Motion to Continue Hearing on Staff's Recommendation Regarding the Retirement of LENS, and to Lift Abeyance in Order to Allow Discovery ("Motion"). AT&T Florida requests that the Florida Public Service Commission ("Commission") deny STS's Motion and in support thereof states the following:

BACKGROUND

1. In its Amended Petition for Injunctive Relief and Request to Restrict or Prohibit AT&T from Implementing its CLEC OSS-Related Releases ("Petition"), STS alleges that the replacement of AT&T Florida's Local Exchange Navigation System ("LENS") OSS system with the Local Service Request Exchange ("LEX") OSS system will create ordering difficulties, and place STS and other Florida CLECs at a significant competitive disadvantage. See Petition at ¶18.

2. AT&T Florida disagrees with STS's allegations. Moreover, Commission Staff disagrees with STS as well. See April 8, 2010 Staff Recommendation in this docket.

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3. As part of the OSS consolidation process, AT&T Florida announced plans to phase-out LENS in AT&T's nine-state region (the former BellSouth region) and replace it with LEX. The CLEC community was notified of these plans to implement LEX in May 2009. As part of the phase-in process to give CLECs in AT&T's nine state region time to adequately learn the new LEX interface without disrupting operations, AT&T stated its intent to run the existing LENS ordering interface in parallel with LEX until March 20, 2010.

4. By Order No. PSC-09-0799-PAA-TP, issued December 2, 2009, the Commission ordered AT&T Florida to run LENS in parallel to LEX until completion of a staff audit and a decision by the Commission on this matter and placed the docket in abeyance.

5. Staff has completed its audit. *See* Staff Audit Report filed on April 5, 2010 in this docket.

6. Staff issued its recommendation and it is scheduled to be heard by the Commission at its April 20, 2010 Agenda Conference. In its recommendation, Staff recommends that AT&T Florida be allowed to move forward with the retirement of LENS under certain conditions. AT&T Florida has agreed to move forward with the Staff's recommendations in the audit report, which are the same as the Staff recommendation to be addressed at the April 20, 2010 agenda conference.

7. In its Motion, STS requests that the Commission continue the April 20, 2010 agenda conference to address staff's recommendation, rule that the abeyance on the remaining claims in STS' petition was lifted once staff submitted its recommendation or,

in the alternative, dissolve it, allow STS to proceed with discovery and require AT&T to produce Steven Hancock, Dan Nickolotsky Sr. and Tina Berard for deposition.

8. AT&T objects to STS's requests and requests that they be summarily denied.

ARGUMENT

9. Staff's recommendation is set for the April 20, 2010 Agenda Conference as a Proposed Agency Action in which interested persons may participate, including STS. *See* Rule 25-22.0021(2) ("Any person who may be affected by an item set for agenda conference will be allowed to address the Commission informally concerning the item when it is taken up for discussion... [t]o participate informally, affected persons need only appear at the agenda conference and request the opportunity to address the Commission on an item listed on the agenda.").

10. STS seems to have a thorough misunderstanding of the Commission's administrative procedures regarding proposed agency action and its interaction with the Administrative Procedures Act embodied in Chapter 120, Florida Statutes. Proposed agency action ("PAA") orders are widely used by the Commission to resolve issues without hearing or to crystallize disputes before hearing. After listening to the staff and whoever else might wish to speak, the Commission votes on a decision at the agenda conference.

11. If the Commission determines to issue a PAA at the agenda conference, a PAA order is issued within 20 days of the vote. Substantially affected person usually have 21 days from the date of the order to file a protest requesting a hearing under Sections 120.569 and 120.57, Florida Statutes. If protested, the intended action of the

commission becomes the subject of an administrative hearing. If no protest is filed, the proposed agency action becomes effective with the issuance of a consummating order. The PAA process recognizes and preserves all parties' due process rights in accordance with the requirements of Sections 120.569 and 120.57.

12. The PAA process was followed when the Commission issued its December 2, 2009 proposed agency action order, where the Order No. PSC-09-0799-PAA-TP ordered "that in the event the Proposed Agency Action portion of this Order becomes final, this docket shall remain open pending the outcome of further proceedings including resolution of the remaining requests in STS' amended petition placed in abeyance until our staff brings a recommendation back to this Commission upon completion of a review." The proposed agency action order became final. *See* December 29, 2009 Consummating Order, Order No. PSC-09-0850-CO-TP.

13. STS did not file a petition for a formal proceeding as it is permitted to do by the Administrative Procedures Act (*See* pages 11-12 of Order No. PSC-09-0799-PAA-TP) and allowed the December 2, 2009 proposed agency action order to become final, which included the provision holding the docket in abeyance. Thus, as STS allowed the December 2, 2009 proposed agency action to become final, it has waived any right to contest its provisions. Moreover, STS's request to alter the PAA order is tantamount to a request for reconsideration which is expressly precluded by Rule 25-22.0376(5), Florida Administrative Code. For STS to now complain that it is being denied due process is absurd.¹

¹ One can only surmise that STS would not have filed the instant motion if the Staff Audit and Recommendation had been more to its liking. Moreover, STS most recent filing filled with unwarranted criticism of the Staff under the label of "comments" on Staff's LENS/LEX audit and the accompanying recommendation is again illustrative of STS fundamental misunderstanding of the administrative

14. Staff has completed its review (i.e. the Audit Report) and now has brought its recommendation to the Commission for review at its April 20, 2010 Agenda Conference as directed by the Commission in Order No. PSC-09-0799-PAA-TP.

15. The Commission should be allowed to make a decision regarding staff's recommendation on the Staff's audit.

16. STS due process rights will not be affected by the Commission's review and decision regarding the Staff audit report at the April 20 agenda conference.


CONCLUSION

For all of the reasons set forth above, the Commission should deny STS's Motion.

WHEREFORE, AT&T Florida respectfully requests that the Commission enter an Order denying STS's Motion to Continue Hearing on Staff's Recommendation Regarding the Retirement of LENS, and to Lift Abeyance in Order to Allow Discovery.

Respectfully submitted this 15th day of April, 2010.

AT&T FLORIDA



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procedures before the Commission and its continued abuse of that process. The filing of "comments" on a Staff recommendation is not provided for in the Commission's Rules and should not be tolerated by the Commission.