

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Petition of Public Counsel and Attorney)
General for Declaratory Statement and for Order)
Limiting Third Party Billing by Florida)
Telecommunication Companies, Verizon, Embarq,)
AT&T, et al.)
_____)

Docket No. 090084-TP

Filed March 17, 2009

PETITION FOR LEAVE TO INTERVENE

ILD Telecommunications, Inc. (“ILD”), pursuant to rules 25-22.039 and 28-106.201(2), Florida Administrative Code, files this petition for leave to intervene in this docket and states:

I. Agency Affected

1. The agency affected is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

The Florida Public Service Commission’s (“Commission”) docket number in this matter is Docket No. 090084-TP.

II. Name and Address of Intervenor and Counsel

2. The name and address of the Intervenor is:

ILD Telecommunications, Inc.
5000 Sawgrass Village Circle, Suite 30
Ponte Vedra Beach, Florida 32082

The names and address of counsel for ILD, authorized to receive all notices, pleadings and other communications in this docket are:

Susan F. Clark and Donna E. Blanton
Radey, Thomas Yon & Clark
301 S. Bronough Street, Suite 200
Tallahassee, Florida 32301
(850) 425-6654 telephone
(850) 425-6694 facsimile

III. Substantial Interests

3. ILD is a privately-held company that provides custom business process outsource and conferencing solutions to the enterprise and wholesale communications markets. ILD operates network facilities and call centers in Dallas, Texas; San Antonio, Texas; and Jacksonville, Florida, with corporate headquarters located in Ponte Vedra Beach, Florida. ILD also has its billing operation in Fort Lauderdale, Florida, and an administrative office in Atlanta, Georgia. ILD's core products include third-party local exchange company ("LEC") and direct billing, operator services, conferencing services, corporate calling cards and global long distance voice services. ILD has a team of over 300 employees servicing more than 3,500 customers. ILD is licensed by the Commission as an interexchange carrier.

4. As a third-party billing aggregator, ILD has a substantial and material interest in the matters raised in this proceeding. ILD has agreements with service providers as well as with LECs. Under these agreements, a service provider forwards charges for its products and/or services to ILD and ILD then forwards those charges to the appropriate LEC to be included in the LEC's bill to the consumer. This process provides for an efficient and convenient way for the consumer to pay for multiple services through one bill.

5. The Joint Petition of the Office of the Public Counsel ("OPC") and Attorney General ("AG") filed in this docket asks that the Commission restrict the entities for whom telecommunications companies may perform third-party billing services, limit the services that may be the subject of such third-party billing arrangements to telecommunications and information services and prohibit telecommunications companies from performing third-party billing for any other services. In this docket, then, the Commission will determine whether to construe sections 364.601 through 364.604, Florida Statutes, the Telecommunications Consumer

Protection Act (the “Act”), in the manner suggested by the Joint Petition and to prohibit third-party billing such as the billing currently being done by the LECs, under agreements with companies such as ILD. Thus, the substantial interests of ILD will be affected by these proceedings because such a determination or action by the Commission would substantially and adversely affect ILD’s ability to aggregate charges for its service providers and then to have those charges billed by the LECs under existing agreements.

6. Rule 25-22.039, Florida Administrative Code, provides that persons other than the original parties to a pending proceeding are entitled to participate in the proceeding when that person has a “substantial interest in the proceeding.” ILD’s substantial interests will be affected through this proceeding.

IV. Notice of Agency Decision

7. ILD received notice that the Commission had received a petition for declaratory statement from OPC and the AG through the Commission’s Notice of Declaratory Statement published in the Florida Administrative Weekly on March 6, 2009.

V. Disputed Issues of Material Fact and Law

8. The Joint Petition suggests that the parties involved in third-party billing arrangements are not concerned that charges to customers are appropriate, specifically stating that the LECs do not have established and implemented systems of verification and that they charge consumers for products and services not purchased. ILD disputes any suggestion or implication that it, as a third-party billing aggregator, does not strive for all customer charges to be authorized and appropriate. Like OPC and the AG, ILD is concerned that consumers be billed only for authorized charges.

9. The Joint Petition states that the Commission should read the Act to restrict the entities for which telecommunications companies may perform third-party billing services, to

limit the services that may be the subject of such third-party billing arrangements to “telecommunications services” and “information services” provided by “originating parties.” Under the interpretation advocated by OPC and the AG, only entities offering “telecommunications services” or “information services” (defined to include 900 or 976 type services but to exclude internet service) should be allowed to bill their services on a LEC’s bill. That interpretation should be rejected. The Act and the rules implementing the Act do not limit the types of services that may be included on a LEC’s bill.

10. The Joint Petition asserts that the Commission has jurisdiction to prohibit third-party charges because of its regulatory authority over the LECs. Neither the Act nor any other provision of Chapter 364, Florida Statutes, authorizes the Commission to regulate the billing of third-party charges by LECs for services other than telecommunications service or 900 or 976 services. Further, the Commission lacks jurisdiction to regulate internet services.

11. The Joint Petition is procedurally flawed. The Joint Petition seeks a declaratory statement from the Commission that the OPC’s and AG’s interpretation of the Act is accurate and applies to, limits and affects the third-party billing arrangements between all LECs and third-party billing aggregators like ILD. A declaratory statement may only be employed to secure “an agency’s opinion as to the applicability of a statutory provision, or of any rule or order of the agency, *as it applies to the petitioner’s particular set of circumstances.*” § 120.565(1), Florida Statutes (emphasis added). Rule 28-105.001, Florida Administrative Code, states that a declaratory statement is to be used “only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner’s particular circumstances” and “is not the appropriate means for determining the conduct of another person or for obtaining a policy statement of general applicability from an agency.” The Joint Petition seeks a sweeping determination from the Commission regarding third-party billing arrangements between all third-

party billing aggregators and LECs and does not appropriately ask for an interpretation of the Act “under the petitioner’s particular set of circumstances.”

12. OPC’s and the AG’s requested relief can only be accomplished through rulemaking. *See* § 120.52(16), Florida Statutes (defining rule as an “agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency”). For that reason alone, the Joint Petition should be denied. Moreover, the Commission lacks statutory authority to adopt a rule limiting the services that can be billed under third-party billing. *See* § 120.52(8), Florida Statutes (“A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute.”).

VI. Ultimate Facts and Law Alleged

13. OPC’s and the AG’s assertions that parties to the third-party arrangements, including third-party billing aggregators like ILD, do not strive for all customer charges to be authorized and appropriate are not correct.

14. OPC’s and the AG’s arguments that the Act prohibits LECs from performing third-party billing for services other than telecommunications and information services, which they interpret to include a prohibition against internet services, and that the Commission has jurisdiction to do so are without merit. The Commission does not have authority to do what OPC and the AG request. The Commission lacks jurisdiction over the services other than telecommunications and information services for which LECs provide third-party billing and the Commission does not have jurisdiction to regulate internet services.

VII. Statutes and Rules that Require the Joint Petition to be Denied

15. The statutes and rules that require the Joint Petition to be denied are sections 364.601 through 364.604, Florida Statutes; section 120.565, Florida Statutes; rules 25-4.003 and 25-4.110, Florida Administrative Code; and rule chapter 28-105, Florida Administrative Code. The Joint Petition's requested actions are not authorized by or in compliance with the statutes and rules and go beyond the Commission's jurisdiction.

VIII. Request for Relief

16. For the reasons expressed, ILD respectfully requests that the Commission determine that this Petition complies with the requirements of rule 25-22.039, Florida Administrative Code, and grant ILD leave to intervene in Docket No. 090084-TP.

Respectfully submitted,

s/Susan F. Clark

Susan F. Clark

Fla. Bar No. 179580

Donna E. Blanton

Fla. Bar No. 948500

Radey Thomas Yon & Clark

301 S. Bronough Street, Suite 200

Tallahassee, Florida 32301

(850) 425-6654 telephone

(850) 425-6694 facsimile

Attorneys for ILD Communications, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via electronic mail this 17th day of March, 2009, upon the following:

Office of Attorney General
Bill McCollum/Keith P Vanden Dooren
The Capitol - PL01
Tallahassee, Florida 32399-1050
Leslie.jacobs@myfloridalegal.com

AT&T Florida
Tracy Hatch
c/o Greg Follensbee
150 S. Monroe Street, Suite 400
Tallahassee, Florida 32303-1561
thatch@att.com
greg.follensbee@att.com

Office of Attorney General
Economic Crimes Division
Michael Palecki
The Capitol - PL01
Tallahassee, FL 32399-1050
Michael.palecki@myfloridalegal.com

Embarq Florida, Inc.
Susan S. Masterton
Mailstop: FLTH00102
1313 Blair Stone Road
Tallahassee, Florida 32301
susan.masterton@embarq.com

Office of Public Counsel
J.R. Kelly/Joseph A. McGlothlin
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Kelly.jr@leg.state.fl.us

Verizon Florida, LLC
David Christian
106 East College Avenue, Suite 710
Tallahassee, Florida 32301-7721
david.christian@verizon.com

Florida Public Service Commission
Patrick L. "Booter" Imhof
General Counsel
2540 Shumard Oak Blvd.
Tallahassee, Florida
bimhof@psc.fl.state.us

Florida Public Service Commission
Charles Murphy
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
cmurphy@psc.state.fl.us

Florida Public Service Commission
Kathryn Cowdery
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
kcowdery@psc.state.fl.us

Enhanced Services Billing, Inc.
Andrea P. Kruchinski
7411 John Smith Drive, Suite 1500
San Antonio, TX 78229
andrea.kruchinski@bsgclearing.com

s/ Susan F. Clark
Susan F. Clark