

ORIGINAL



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OFFICE OF THE PUBLIC COUNSEL**

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October 14, 1997

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. ~~970000-41~~

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are the original and 15 copies of the First Motion to Compel Against ITS by the Attorney General and the Citizens of Florida. A diskette in WordPerfect 6.1 is also submitted.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Charles J. Beck
Deputy Public Counsel

- ACK
- AFA _____
- APP Chadwell
- CAF 2
- CMU _____
- CTR _____
- EAC _____
- LE FVI CJB:bsr
- LI 5 Enclosures
- RCI 1
- SEC 1
- WAS _____
- OTH _____

RECEIVED & FILED

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICES COMMISSION

In re: Proposed Rule 25-24.845,)
 F.A.C., Customer Relations;)
 Rules Incorporated, and Proposed)
 Amendments to Rules 25-4.003,)
 F.A.C., Definitions; 25-4.110,)
 F.A.C., Customer Billing; 25-)
 4.118, F.A.C., Interexchange)
 Carrier Selection; 25-24.490,)
 F.A.C., Customer Relations;)
 Rules Incorporated.)

Docket No. 970882-T1

Filed: October 14, 1997

**FIRST MOTION TO COMPEL AGAINST ITS
 BY THE ATTORNEY GENERAL AND THE CITIZENS OF FLORIDA**

Robert A. Butterworth, Attorney General ("Attorney General") and the Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the Florida Public Service Commission to issue an order requiring Integrated TeleServices, Inc., d/b/a ITS Corp. ("ITS") to produce each of the documents requested in the First Set of Requests for Production of Documents to ITS by the Attorney General and the Citizens. In support of this motion, the Attorney General and the Citizens submit the following:

1. On September 11, 1997, the Attorney General and the Citizens served our first set of requests for production of documents to ITS. These requests for documents seek documents necessary for the Attorney General and the Citizens to prepare our case. On October 13, 1997, ITS filed its objections to this request for production of documents.

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FPSC-RECORDS/REPORTING

2. ITS makes a general objection against responding to any discovery requests because it is a "non-party." This matter was specifically discussed at the agenda conference when the Commission took up the joint petition by the Attorney General and the Citizens for initiation of formal proceedings pursuant to section 120.57, Florida Statutes. The staff recommended that the Commission's undocketed rule proceeding dealing with slamming be joined with the petition by the Attorney General and the Citizens of Florida. Since this docket is now a rule proceeding, there are no "parties" to the proceeding. At the agenda conference dealing with the joint petition, the Attorney General and the Citizens specifically requested confirmation that all telecommunications companies with a certificate from the Commission could be served with discovery requests in this proceeding. All such companies are potentially affected by a change in rules. The staff confirmed that it agreed with this interpretation, and the Commission questioned staff about this interpretation. No disagreement was expressed by the Commission, staff, or any other party at agenda concerning this matter. Therefore, the Commission has already confirmed that any company with a certificate from the Commission is subject to discovery requests in this docket. Had this not been so, the Attorney General and the Citizens would not have agreed to joining the rule proceeding with our petition for an investigation into slamming. ITS' objection should be denied.

3. ITS also objects to the requests to the extent that the requests seek to impose an obligation on ITS to respond on behalf of subsidiaries, affiliates, or other persons. Definition number 2 of the request for documents stated that the terms "you" and "your" meant ITS together with its officers, employees, consultants, agents,

representatives, attorneys (unless privileged), and any other person or entity acting on behalf of ITS. The document request does not seek to have ITS procure documents from every affiliated company of ITS. Rather, it seeks only those documents from persons or entities acting on behalf of ITS. This is a proper request for documents. Rule 1.350, Florida Rules of Civil Procedure (adopted by Commission rule) allows requests for documents in the possession, custody, or control of the party to whom the request is directed. Persons or entities acting on behalf of ITS are within the "control" of the company. In addition, when two companies "act as one," discovery is permissible. *Medivision of East Broward County, Inc. vs. Department of Health and Rehabilitative Services*, 488 So.2d 886 (Fla. 1st DCA 1986). See also *Michelin Tire Corporation vs. Susan Ann Roose*, 531 So.2d 361 (Fla. 4th DCA 1988). ITS must therefore produce documents by persons and entities acting on its behalf, not just those strictly within the possession of ITS. ITS' objection should be denied.

4. ITS objects to producing any documents other than those solely related to ITS' regulated intrastate operations. The Attorney General and the Citizens do not object to ITS' limitation as it relates to specific customer complaints about slamming. However, to the extent other document requests relate more generally to analyses or matters related to slamming, the document requests should not be limited only to ITS' intrastate operations. Matters related to slamming either in the interstate jurisdiction or other states in general are relevant to this proceeding because they deal with the same general problems experienced in Florida. Slamming is not a phenomena known only to Florida intrastate operations. Instead, it is a nationwide problem, and documents related to this

nationwide problem are relevant to Florida intrastate operations. Therefore, to the extent that ITS' objection relates to anything other than specific customer complaints from other states or jurisdictions, ITS' objection should be denied.

5. ITS next objected to every request and instruction to the extent that the instruction or request called for information which is exempt from discovery by virtue of various privileges. ITS identified no such documents and gave no specific examples of where that privilege might apply. This objection should be denied unless and until ITS can identify specific documents to which it applies. Once ITS specifically identifies such documents, the Attorney General and the Citizens will then decide whether to seek an *in camera* inspection of those documents to determine the extent and validity of any claimed privilege.

6. ITS objected to each and every request insofar as the request was vague, ambiguous, voluminous, overly broad, imprecise, or utilized terms that are subject to multiple interpretations, etc. However, ITS provided no example whatsoever of any case where such a request for documents fell within that objection. This type of boilerplate objection is improper because ITS does not identify any request to which the objection relates. The objection should be denied.

7. Similarly, ITS objected to every request insofar the request was not reasonably calculated to lead to the discovery of admissible evidence, etc. However, ITS provided no example whatsoever of where this objection applied. Although ITS stated that

it would attempt to note each instance where this objection applied, it did not do so in these objections. Since ITS provided no specific example where this objection might apply, it should be denied.

8. ITS objected to the instructions in the document request, insofar as they seek to impose obligations on ITS which exceed the requirements of the Florida Rules of Civil Procedure or Florida law. Like other objections, this boilerplate objection provided no specific example or any instance where this objection might apply. Since ITS was unable to provide any specific example or describe where it might apply, the objection should be denied.

9. ITS further objected to providing information to the extent that such information is already in the public record before the Florida Public Service Commission. The rules of discovery do not provide such an exemption from discovery. This invalid objection must be denied.

10. ITS objected to each and every request, general instruction, or definition insofar as it was unduly burdensome, expensive, oppressive, or excessively time consuming to comply with as written. Like many of ITS's objections, ITS provides no example of where this objection might apply. Since ITS was unable to identify any instance where this would apply, the objection should be denied.

11. ITS objected to each and every request to the extent that the information

constituted trade secrets. With respect to its claim of privilege, LDC must identify the document or documents it claims to be privileged, and at that point the Attorney General and the Citizens will decide whether to seek an *in camera* inspection of the documents to determine the validity or extent of the privilege.

12. ITS is due to produce the requested documents on or before October 16, 1997. Accordingly, the Attorney General and the Citizens request the Commission to rule on this motion as soon as possible in order to mitigate the delay caused by late filing of objections by ITS.

Respectfully submitted,

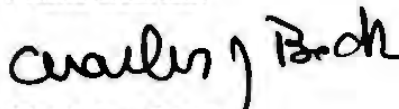
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**CERTIFICATE OF SERVICE
Docket No. 970882-TL**

**I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail
or hand-delivery to the following parties on this 14th day of October, 1997.**

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