ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Joint Petition against BellSouth, Embarq and Verizon for billing charges not authorized by law and request for refunds or credits to consumers /	Docket No.: 060650-TL Filed: October 27, 2006

RESPONSE TO BELLSOUTH, VERIZON AND EMBARQ'S MOTIONS TO DISMISS THE JOINT PETITION

The Citizens of the State of Florida (Citizens) and Attorney General Charles J. Crist, Jr. (the Attorney General), respond to Bellsouth, Verizon, and Embarq's Motions to Dismiss the Joint Petition, and state the following:

1. Citizens and the Attorney General have brought before the Commission a case of first impression regarding the third-party billing practices of BellSouth, Verizon, and Embarq (the Companies) specifically in relation to a company called Email Discount Network (EDN). As a case of first impression, the Commission has broad discretion in interpreting the applicable statute and rules. The statute in question is the Telecommunication Consumer Protection Act (Act), Section 364.601-364.604, Fla. Stat. The Companies argue that this is well settled law, but it is not. This is the first time utilities regulated by this Commission have argued that they can cram onto their customers' bills invalid charges for entities that are not telecommunications or information services, and that this Commission is powerless to do anything about it.

2. The Citizens and the Attorney General have asserted that the Telecommunications Consumer Protection Act actually protects consumers, while BellSouth, Verizon, and Embarq insist that it does not.

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3. The Act clearly provides protection for what is placed on the telephone bill, how it is placed on the bill, and how customers are protected. The public policy issue is whether this Act permits the billing of widgets and beach balls on telephone bills. Can a consumer in Florida have his phone number turned into a credit card and be subject to fraud?

4. BellSouth, Verizon and Embarq's arguments make little sense. Under their analyses, telecommunications and information services are subject to substantial regulation by virtue of the Act, but there is no consumer protection under the Act for any other billing. They believe they are permitted to cram onto customer's bills invalid charges for third parties that are not telecommunications or information providers, and that this Commission is powerless to do anything about it. They are effectively telling this Commission: we can cram our customers with bogus charges for any entity that is not a telecommunications or information provider and you can't do anything to stop us. We believe they are wrong.[1]

5. BellSouth, Verizon, and Embarq are billing parties as defined in section 364.602(1), Fla. Stat. since they are telecommunications companies that bill end users on their own behalf. BellSouth and Verizon argue that EDN is not an Originating party since it is not providing an information service as defined in 364.602(5), Fla. Stat. BellSouth and Verizon's conclusions are that the statute does not therefore apply at all, and all non-

[1] BellSouth's Motion is flawed in yet another respect. BellSouth confuses the issue of provision of ISP traffic (which is interstate in nature) with the issue of billing customers on a telephone bill by a local exchange company (which is regulated by the individual states). Under Bellsouth's argument, the states cannot do anything about cramming if the cramming is done by an internet service provider. BellSouth is wrong. It is well within the authority of this Commission to stop cramming on the bills of the local exchange companies it regulates. BellSouth's reasoning is doubly flawed here, because the BellSouth customers who were crammed by EDN will testify that they have neither ordered nor received internet service (or any other product) from EDN. For these customers EDN is not a provider of internet services. They are only a crammer.

telecommunications services and all internet services are permitted billings. Embarq argues, additionally, that the exemption from the definition of a "telecommunication company" for certain types of services allows third-parties to bill on the telecommunication company's bills without having to meet the protections outlined in the Act. The arguments make no sense on their face, and make no sense in practice.

6. One does not simply have to rely on common sense to determine that the Companies' analyses are flawed; simply look at the statute. Section 364.604, Fla. Stat., specifies the permitted billing practices. Subsection (1) provides:

> Each billing party [such as Bellsouth, Verizon, and Embarq] must clearly identify on its bill the name and toll-free number of the originating party; the telecommunications service or information service billed; and the specific charges, taxes, and fees associated with each telecommunications or information service. . . .

7. However, when billing for a third party like EDN, that is not a telecommunications or information service, the Companies are not able to comply with the statutory requirement. They cannot identify the originating party, since, by definition, EDN is not an originating party. They also cannot provide the customer with information about the charges associated with the telecommunications or information service, since there is no such service involved. The statute does not provide for an exemption from these requirements, nor is one needed since companies like EDN are free to issue their own bills to customers for their services.

8. BellSouth, Verizon, and Embarq then conclude that since they cannot comply with the statute, the statute does not apply. They would have the Commission create an exemption where none exists. Since there is no specific statutory exemption from

Section 364.604 for BellSouth, Verizon, and Embarq, they must comply with its statutory mandates.

9. Not surprisingly, the Public Service Commission's own rules highlight the necessity of having the name of the originating party identified on the bill. Section 25-4.110(2)(c) , F.A.C. requires that "each charge shall be described under the applicable originating party heading." Nowhere in the statute or the rule is permission granted for billing for other than a telecommunications company or an originating party.

10. In the proceedings on those proposed rules, some smaller carriers were seeking an exemption from the application of the proposed rules, and BellSouth appeared before the Commission with the following contention:

> BellSouth argued that all telecommunications providers should be subject to the provisions of Rule 25-4.110(2), in order to provide adequate and equal protection to all telecommunications customers in Florida.[2]

11. Obviously, BellSouth's position regarding adequate and equal protection to telecommunications customers in Florida is a flexible one. BellSouth would have the Commission apply the act to others, but exempt its own practices from scrutiny.

12. After reviewing the public policy, the statute and the rule, the conclusion is inescapable; telecommunications companies are permitted to bill for telecommunications or information services; not a thing more. To reach any other conclusion flies in the face of logic and the clear language of the statute. And if a company cannot bill for an entity, it goes without saying that there can be no cramming for the entity. It is well is within this Commission's authority to stop cramming on the bills of the local exchange

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2 Proposed amendments to Rules 25-4.003, F.A.C., Definitions; 25-4.110, F.A.C., Customer Billing for Local Exchange Telecommunications Companies; 25-4.113, F.A.C., Refusal or Discontinuance of Service by Company; 25-24.490, F.A.C., Customer Relations; Rules Incorporated; and 25-24.845, F.A.C., Customer Relations; Rules Incorporated. DOCKET NO. 990994-TP; ORDER NO. PSC-01-0229-FOF-TP. Florida Public Service Commission. 2001 Fla. PUC LEXIS 152. January 24, 2001

companies it regulates. This Commission has the authority to stop the companies it regulates from cramming for unscrupulous telecommunications and information services. This Commission also has the authority to stop the companies it regulates from both billing and cramming for other third parties. We ask this Commission to send the message, loud and clear that Companies regulated by this Commission are not permitted to cram period. And especially they are not permitted cram for an entity they are not permitted to bill for.

13. The Companies fail to meet the standard for a Motion to Dismiss. In order to sustain a motion to dismiss, the moving parties must show 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. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). 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). When Adetermining the sufficiency of the complaint, the trial court may not look beyond the four corners of the complaint, consider any affirmative defenses raised by the defendant, nor consider any evidence likely to be produced by either side.@ Id. Contrary to the Companies motions, Citizens and the Attorney General's joint petition states a cause of action including the applicable statutory authority for the Commission's jurisdiction. As a case of first impression, policy as well as other evidentiary matters will greatly impact the application and interpretation of the statutes in question. Thus, this matter should proceed to a hearing allowing the Commission the benefit of all testimony and evidence.

WHEREFORE, the Citizens and the Attorney General hereby request that the Commission deny the Motions to Dismiss filed by BellSouth, Embarq, and Verizon.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that a true and correct copy of the Office of Public Counsel and Attorney General's Joint Petition had been furnished by electronic mail and U.S. Mail on this 27th day of October 2006, to the following:

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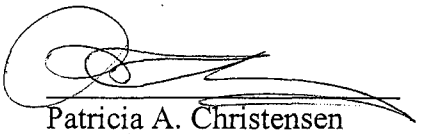

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