

Diamond Williams

100275-TP

From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Tuesday, May 11, 2010 2:39 PM
To: Filings@psc.state.fl.us
Subject: New Docket: AT&T's Florida's Complaint against Grande Communications Networks LLC, and Grande Communications Networks, Inc.
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. Complaint of BellSouth Telecommunications, Inc. d/b/a AT&T Florida Against Grande Communications Networks LLC, and Grande Communications Networks, Inc.
- C. BellSouth Telecommunications, Inc. d/b/a AT&T Florida

on behalf of Manuel A. Gurdian
- D. 13 pages total (includes letter, pleading and certificate of service)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Complaint

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<<Untitled.pdf>>

DOCUMENT NUMBER-DATE

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May 11, 2010

Ms. Ann Cole, Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850


**Re: Complaint of BellSouth Telecommunications, Inc. d/b/a AT&T
Florida Against Grande Communications Networks LLC, and
Grande Communications Networks, Inc.**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's
Complaint, which we ask that you file in the captioned *new* 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
Complaint of BellSouth Telecommunications, Inc. d/b/a AT&T Florida
Against Grande Communications Networks LLC, and
Grande Communications Networks, Inc.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and First Class U.S. Mail this 11th day of May, 2010 to the following:

Adam Teitzman
General Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
ateitzma@psc.state.fl.us

Grande Communications Networks, Inc.
Grande Communications Networks LLC
Dale B. Schneberger
401 Carlson Circle
San Marcos, TX 78666
dale.schneberger@grandecom.com

Bartlett Leber
General Counsel Atlantic Broadband
Grande Communications Networks LLC
401 Carlson Circle
San Marcos, Texas 78666
Tel. No. (617) 786-8800 x112
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bleber@atlanticbb.com



Mandel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth)
Telecommunications, Inc. d/b/a AT&T)
Florida Against Grande Communications)
Networks LLC, and Grande)
Communications Networks, Inc.)

Docket No. _____

Filed: May 11, 2010

AT&T FLORIDA'S COMPLAINT

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), pursuant to Rule 25-22.036, Florida Administrative Code, and 47 U.S.C. § 252, hereby files this Complaint against Grande Communications Networks LLC¹ ("Grande LLC") and Grande Communications Networks, Inc. ("Grande") for breach of the Interconnection Agreement between AT&T Florida and Grande dated June 29, 2003 (as amended) (hereinafter the "Agreement")² and says:

INTRODUCTION

Grande is certificated in Florida as both a Competitive Local Exchange Carrier ("CLEC")³ and an Interexchange Carrier ("IXC")⁴ and obtains from AT&T Florida a variety of services that enable Grande to provide telecommunications services in Florida. The services provided by AT&T Florida to Grande include transiting services, transport and termination services, and interstate and intrastate interexchange terminating exchange access services. The prices, terms, and conditions that apply to these services are contained in the Agreement (for

¹ Upon information and belief, Grande Communications Networks, LLC is the successor in interest to Grande Communications Networks, Inc., thus AT&T Florida has named both entities in this Complaint notwithstanding the fact that Grande Communications Networks, Inc. appears to be the certificated operating company in Florida. AT&T does not raise in this Complaint the issue of which entity (Grande or Grande LLC) should be certificated in Florida, but will leave that issue to Commission Staff.

² The Agreement, dated June 29, 2003 and effective October 22, 2003, was originally approved by Florida Public Service Commission ("Commission") in Docket No. 030700-TP.

³ CLEC Certificate Number 7514 granted on July 11, 2000.

⁴ IXC Certificate Number 7727 granted February 20, 2001.

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transiting and transport and termination services) and in AT&T Florida's federal and state tariffs (for interstate and intrastate interexchange terminating exchange access services).⁵

This Complaint arises from, and is limited to, Grande's failure to pay AT&T Florida the full amount of AT&T Florida's invoices to Grande for reciprocal compensation and transiting charges under the terms of the Agreement. Since at least December 2005, and continuing to the present, AT&T Florida has provided to Grande, in accordance with the Agreement, transiting and transport and termination services, and has invoiced Grande for these services on a monthly basis, also in accordance with the rates, terms, and conditions in the Agreement. However, while AT&T Florida has satisfied its obligations under the Agreement, Grande has unlawfully refused to pay almost all of the invoiced amounts for these services. Excluding late fees, these unpaid invoices total more than \$290,000, a figure that continues to increase every month.

The Agreement between AT&T Florida and Grande provides that disputes like this are to be resolved in the first instance by this Commission.⁶ AT&T Florida, therefore, respectfully requests that the Commission resolve the outstanding disputes, determine the amount that Grande owes AT&T Florida under the Agreement, and require Grande to pay that amount to AT&T Florida as required by the Agreement. In support of this Petition, AT&T Florida alleges as follows:

⁵ This Complaint does not include claims for interstate and intrastate interexchange terminating exchange access services; however, those services are noted to give the Commission the full scope of the services AT&T Florida provides to Grande in Florida.

⁶ AT&T Florida has attempted in good faith to resolve this dispute with Grande on several occasions. Immediately prior to the filing of this Complaint, AT&T Florida again attempted to resolve this issue with Grande. (See March 25, 2010 letter from AT&T Florida to Grande attached hereto as Exhibit A) Per its correspondence in response, Grande continues to refuse to pay the amounts due under the Agreement. (See April 1, 2010 letter from Grande to AT&T Florida attached hereto as Exhibit B)

PARTIES

1. AT&T Florida is a corporation organized under the laws of the state of Georgia with its principal place of business in Atlanta, Georgia. AT&T Florida is an "incumbent local exchange carrier" ("incumbent LEC" or "ILEC"), as that term is defined in Section 251(h) of the 1996 Act, in its authorized service areas in Florida. AT&T Florida is a telecommunications service provider authorized to provide and providing telecommunications services within the State of Florida.

2. The full name and address of the authorized representative(s) for AT&T Florida in this proceeding are:

E. Earl Edenfield, Jr.
Tracy W. Hatch
Manuel A. Gurdian
c/o Gregory R. Follensbee
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
ke2722@att.com
th9467@att.com
mg2708@att.com
305.347.5560 (telephone)
850.222.8640 (fax)

3. Defendant Grande is a Delaware corporation with its principal place of business in San Marcos, Texas. Grande is certificated as both a CLEC and IXC in the State of Florida and is therefore authorized to provide telecommunications services within the State of Florida.

4. Upon information and belief, Defendant Grande LLC is a Delaware corporation with its principal place of business in San Marcos, Texas and is the successor in interest to Grande. Grande LLC does not appear to be certificated as either a CLEC or IXC in the State of Florida.

5. The names and address for the Defendants to the Complaint are:

Grande Communications Networks, Inc.
Grande Communications Networks LLC
Dale B. Schneberger
401 Carlson Circle
San Marcos, TX 78666
e-mail: dale.schneberger@grandecom.com

JURISDICTION

6. The Florida Public Service Commission (“Commission”), located at 2540 Shumard Oak Blvd, Tallahassee, Florida 32399, has jurisdiction to interpret and enforce the terms of the Agreement at issue in this Complaint pursuant to the Telecommunications Act of 1996 (“1996 Act”), which expressly authorizes state commissions to mediate interconnection agreement negotiations,⁷ arbitrate interconnection agreements,⁸ and approve or reject interconnection agreements.⁹ The federal courts have consistently held that Section 252 of the 1996 Act implicitly authorizes state commissions to interpret and enforce the interconnection agreements they approve.¹⁰

GRANDE’S BREACH OF THE INTERCONNECTION AGREEMENT

7. As noted above, AT&T Florida and Grande are parties to an interconnection agreement dated June 29, 2003. (Due to its size, the Agreement is not attached hereto, but is available for public inspection in Commission Docket No. 030700-TP). The Agreement went into effect by operation of law on October 22, 2003. (See Docket No. 030700-TP, 10/27/03 Memorandum to Docket File) The Agreement establishes the rates, terms, and conditions for

⁷ 47 U.S.C. § 252(a)(2)

⁸ *Id.* § 252(b)

⁹ *Id.* § 252(e)

¹⁰ See, e.g., *Bell Atl. Md., Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 304 (4th Cir. 2001) (“The critical question is not whether State commissions have authority to interpret and enforce interconnection agreements – we believe they do”), *vacated on other grounds in Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 65 (2002). See also *Core Commc’ns v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 342 n.7 (3rd Cir. 2007) (“[E]very federal appellate court to consider the issue has determined or assumed that state commissions have authority to hear interpretation and enforcement actions regarding approved interconnection agreements”).

(among other things) reciprocal compensation for the transport and termination of certain traffic exchanged between AT&T Florida and Grande, and for “transiting” service. The Agreement has been in effect at all times relevant to this Complaint.

8. The terms and conditions pertaining to Network Interconnection between Grande and AT&T Florida, including the reciprocal compensation and transit traffic provisions, are set forth in Attachment 3 to the Agreement. Attachment 7 to the Agreement governs billing between the parties. Certain provisions of Attachment 3, including section 7.1.4 pertaining to reciprocal compensation, were amended by agreement dated March 28, 2006. (See July 7, 2006 Memorandum to File in Docket No. 060327-TP) Attachment 3 (as amended) and Attachment 7 are integral parts of the Agreement, and this Petition will refer to “Attachment 3,” “Attachment 7” and the “Agreement” interchangeably.

9. The following paragraphs describe: (1) the transport and termination services subject to reciprocal compensation; and, (2) the transiting services that AT&T Florida has provided to Grande in accordance with the Agreement, but for which Grande has unlawfully refused to pay.

Transport and Termination of Certain Local Traffic (Reciprocal Compensation)

10. Section 7.1 of Attachment 3 sets forth the terms and conditions for “interconnection compensation,” including, without limitation, reciprocal compensation of intercarrier telecommunications traffic between AT&T Florida and Grande. Since March 28, 2006, Section 7.1.4 has provided that “[e]ach Party shall pay compensation to the other Party for Call Transport and Termination of Local Traffic or ISP-bound Traffic at the composite rate set forth in Exhibit A of Attachment 3.” Before March 28, 2006, Section 7.1.4 provided that, in the state of Florida, “the Parties will compensate each other on [a] mutual and reciprocal basis for

the per minute of use rate elements associated with Call Transport and Termination of Local Traffic at the elemental rates set forth in Exhibit A of this Attachment.” Exhibit A to Attachment 3 establishes the rates to be used in charging reciprocal compensation for the termination of Local calls. Like Section 7.1.4, Exhibit A to Attachment 3 was amended as of March 28, 2006.

11. At all times relevant hereto, Section 7.1.1 of Attachment 3 has provided that “[f]or reciprocal compensation between the Parties pursuant to this Attachment, Local Traffic is defined as any circuit switched call that is originated by an end user of one Party and terminated to an end user of the other Party within a given LATA on that other Party’s network, except for those calls that are originated or terminated through switched access arrangements as established by the ruling regulatory body.”

12. Pursuant to Attachment 3, Grande has delivered significant amounts of Local Traffic to AT&T Florida for completion to AT&T Florida’s customers. AT&T Florida has completed delivery of this traffic in accordance with the Agreement. All of this Local Traffic is subject to reciprocal compensation under the terms of the Agreement. AT&T Florida has billed Grande for amounts due to AT&T Florida as reciprocal compensation in accordance with the Agreement.

13. In accordance with the Agreement, beginning in December 2005, AT&T Florida rendered to Grande monthly invoices for reciprocal compensation by means of an industry-standard billing system known as CABS (Carrier Access Billing System). (See, Agreement, Attachment 7, Section 1.1) Under the Agreement, “Grande shall make payment for all services billed.” (See, Attachment 7, Section 1.2.2) However, Grande has refused to pay the full amount of the invoices it has received from AT&T Florida for reciprocal compensation. As of March 31,

2010, the unpaid bills for reciprocal compensation (not including late payment charges) totaled at least \$38,000.

14. Grande submitted dispute forms to AT&T Florida related to these charges. The dispute forms provided Grande's position that "this is VoIP traffic, not subject to compensation under either a tariff or the terms of an interconnection agreement and is therefore disputed. As you may be aware the issue involved in this dispute [is] now pending at the FCC. All usage is being disputed."

15. AT&T Florida has consistently denied Grande's dispute forms and given its reasons for denial. AT&T Florida has explained, among other things, that the Agreement requires Grande to pay the full amount of the invoiced reciprocal compensation charges for transport and termination of Grande's Local Traffic, and that the Local Traffic on which these charges have been assessed is not exempt from intercarrier compensation requirements on the grounds that it is VoIP ("Voice over Internet Protocol") traffic, or for any other reason.

16. In fact, the Agreement does not exempt calls utilizing VoIP technology from reciprocal compensation. Accordingly, whether the Local Traffic that Grande hands off to AT&T Florida is indeed "VoIP" traffic (which Grande has never established) is completely irrelevant to Grande's obligation to pay reciprocal compensation under the terms of the Agreement.

Transiting

17. In addition to delivery of Local Traffic handed off by Grande, AT&T Florida also provides transiting services to Grande under the Agreement.

18. Section 2.1.17 of Attachment 3 defines “Transit Traffic” as “traffic originating on Grande’s network that is switched and/or transported by BellSouth and delivered to a third party’s network”

19. AT&T Florida routes and delivers Transit Traffic, on behalf of Grande, across AT&T Florida’s network to the appropriate third-party carriers (who then deliver the calls to their end-users). The Agreement requires Grande to pay AT&T Florida for this service. (See Attachment 7, Section 1.2.2) In addition, Section 7.6.1 of Attachment 3 to the Agreement provides that “[r]ates for local Transit Traffic . . . shall be the applicable Call Transport and Termination charges as set forth in Exhibit A to this Attachment. Rates for Switched Access Transit Traffic shall be the applicable charges as set forth in BellSouth Interstate or Intrastate Switched Access tariffs.”

20. Since at least December 2005, Grande has delivered traffic to AT&T Florida that requires transiting service, and AT&T Florida has provided that service and billed Grande at the applicable rate. Grande has refused to pay the full amount of these transiting charges, again asserting, erroneously, that the traffic it delivers to AT&T Florida is “VoIP” traffic that is exempt from transiting charges.

21. As explained above, the Agreement does not exempt VoIP traffic from transiting charges, and Grande has not, in any case, established that the traffic it delivers to AT&T Florida for transiting is VoIP traffic.

22. As of March 31, 2010, Grande’s unpaid bills for transiting charges in Florida (excluding late payment charges) were at least \$252,000.

COUNT I
(BREACH OF INTERCONNECTION AGREEMENT –
RECIPROCAL COMPENSATION)

23. AT&T Florida repeats the allegations of paragraphs 1-22 above as if fully set forth herein.

24. The Agreement requires Grande to pay AT&T Florida reciprocal compensation for the transport and termination of local traffic that Grande hands off to AT&T Florida for delivery to AT&T Florida's end-users. Since December 2005, Grande has handed off to AT&T Florida traffic that Grande characterizes as local. AT&T Florida has complied with its obligations under the Agreement and has transported and terminated that local traffic for Grande.

25. AT&T Florida has duly rendered monthly invoices to Grande for that service in accordance with the terms of the Agreement.

26. Grande has refused to pay AT&T Florida in full for the transport and termination service it has ordered and received from AT&T Florida, despite repeated requests and demands for such payment from AT&T Florida. Grande also has failed to provide AT&T Florida with any evidence showing that the traffic it has handed off to AT&T Florida for termination to AT&T Florida's end-users over local facilities is not subject to the Agreement's reciprocal compensation requirements.

27. The charges Grande has refused to pay currently amount to at least \$38,000 (excluding late payment charges), and increase every month.

28. Accordingly, Grande has breached the Agreement by failing to pay reciprocal compensation to AT&T Florida for local traffic and owes AT&T Florida at least \$38,000 (excluding late payment charges) as of March 31, 2010, with the final amount to be determined in these proceedings.

COUNT II
(BREACH OF INTERCONNECTION AGREEMENT - TRANSITING)

29. AT&T Florida repeats the allegations of paragraphs 1-22 above as if fully set forth herein.

30. Each month from December 2005 to the present, Grande has delivered to AT&T Florida traffic that is destined for customers of third-party carriers, rather than AT&T Florida's own end-users. AT&T Florida, in turn, has routed and delivered this traffic to the appropriate third-party carriers. Sections 7.1.5 and 7.6 of Attachment 3 to the Agreement require Grande to pay AT&T Florida for local transiting service at "the appropriate elemental rates set forth in Exhibit A" to Attachment 3.

31. AT&T Florida has billed Grande for this transiting service at the appropriate rate established in the Agreement. Under the Agreement, "Grande shall make payment to BellSouth for all services billed." (See, Attachment 7, Section 1.2.2) Grande, however, has refused to pay the full amounts due and owing for the transiting service provided by AT&T Florida. The past due amount through December 31, 2009 totaled at least \$252,000 (excluding late payment charges), and increases each month.

32. Accordingly, Grande has breached the Agreement by failing to pay for transiting service rendered by AT&T Florida and owes AT&T Florida at least \$252,000 as of March 31, 2010 (excluding late payment charges), with the final amount to be determined in these proceedings.

REQUEST FOR RELIEF

WHEREFORE, AT&T Florida respectfully requests that the Commission:

- (1) Serve a copy of this Complaint upon Grande and Grande LLC;

(2) Find that Grande and Grande LLC have breached the Agreement by failing to pay amounts due and payable to AT&T Florida for services provided in accordance with the Agreement;

(3) Require Grande and Grande LLC, under the Agreement, to pay AT&T Florida all amounts not paid by Grande and Grande LLC, including without limitation all applicable late payment charges.

(4) Grant AT&T Florida such additional relief as the Commission may deem just and proper.

Respectfully submitted this 11th day of May, 2010.

AT&T FLORIDA



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