



Tracy W. Hatch
General Attorney

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

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T: (850) 577-5508
th9467@att.com

June 19, 2015

Carlotta Stauffer, Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No.: 140156-TP: Petition of Communications Authority, Inc.
for Section 252(b) Arbitration**

Dear Ms. Stauffer:

Enclosed is BellSouth Telecommunications, LLC d/b/a AT&T Florida's Motion to Strike and for Attorney's Fees, which we ask that you file in the captioned docket.

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

Sincerely,

s/Tracy W. Hatch

Tracy W. Hatch

cc: All Parties of Record
Elise R. McCabe
Patrick W. Turner

1134478

CERTIFICATE OF SERVICE
Docket No. 140156-TP

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

Electronic Mail this 19th day of June, 2015 to the following:

Lee Eng Tan
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No.: (850) 413-6183
ltan@psc.state.fl.us

Communications Authority
Mike Ray
11523 Palm Brush Trail, #401
Lakewood Ranch, FL 34202
Tel. No.: (941) 600-0207
mike@commauthority.com

Law Office of Kristopher E. Twomey, P.C.
Kristopher E. Twomey
1725 I Street, NW, Suite 300
Washington, DC 20006
Tel. No.: (202) 681-1850
Fax No.: (202) 517-9175
kris@lokt.net

s/Tracy W. Hatch
Tracy W. Hatch

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Communications Authority, Inc. for arbitration of Section 252(b) interconnection agreement with BellSouth Telecommunications, LLC d/b/a AT&T Florida.

DOCKET NO. 140156-TP

DATED: JUNE 19, 2015

MOTION TO STRIKE AND FOR ATTORNEY'S FEE

BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida") respectfully moves the Commission pursuant to Rule 28-106.204, Florida Administrative Code, to strike from Communications Authority, Inc's Post-Hearing Brief the passages identified below.

The only facts a party may properly assert in a post-hearing brief are those for which there is evidence of record. There is perhaps no principle of litigation more basic than this. Communications Authority's ("CA") brief, however, is riddled with assertions of fact that are supported by no evidence of record. The Commission should order CA to delete all such assertions from its brief and to re-file it.¹

The starting point is the four exhibits that CA attached to its brief and that were never introduced in evidence. As Staff's Senior Attorney stated in the email attached hereto as Exhibit 1, "any attachment added to the brief that was **not included in the hearing record**, cannot be considered in the recommendation. As far as Staff understands, the attachments provided by CA are new information not in the hearing record." (Emphasis in original.) Accordingly, the four exhibits must not be attached to CA's refiled brief.

¹ It would not be sufficient for the Commission merely to disregard the assertions. The Commission's decision in this proceeding may be appealed, and if it is, the court should have a proper brief in hand.

In addition, the assertions in CA's brief that are based on the improperly filed exhibits must be expunged. Those assertions are:

1. Page 47, footnote 52 (based on improper Exhibit 4).
2. The passage starting on page 51 ("Attached as Exhibit 1 . . .") and ending on page 52 (" . . . AT&T Florida's obligations." (based on improper Exhibit 1).
3. Page 72, the passage starting "TCG Florida also refuses . . ." and ending ". . . led to the bills." (based on improper Exhibit 2).
4. Page 88, top paragraph ("What a shame . . . business relationships.") (based on improper Exhibit 3).

CA's offense goes beyond the improper exhibits and assertions based upon them. The following additional assertions in CA's brief are unsupported by record evidence and should be stricken:

5. Page 25, the assertion that "CA has stated that it intends to use cageless collocation." Normal practice, which CA eschewed in many instances, is to include record cites for factual assertions. CA's brief includes no cite for the assertion that CA has stated it intends to use cageless collocation, and AT&T Florida does not believe any record evidence supports that assertion.²

6. Page 54, the sentence reading, "AT&T has testified . . . as of the date received." There is no evidence in the record that supports the assertion that AT&T Florida testified as indicated. The supposed support (in footnote 61) is "Ray Rebuttal" – with no page cite. The Ray Rebuttal does not say that AT&T testified as asserted in the text – and AT&T in fact never so testified.

² AT&T Florida acknowledges, of course, that the assertion should not be stricken if CA is able to provide a record cite in its response to this motion.

7. The paragraph that starts on page 60 (“Pellerin’s statements betray . . .”) and that ends on page 61 (“ . . . ever issued by AT&T.”). There is no evidence in the record to support any of the assertions in that paragraph about a Joint Prehearing Conference, a Project ID, the submission of orders or the issuance of a FOC.

8. The passage in the second full paragraph on page 66 beginning “However, most collocators . . .” and ending “it might collocate.” CA’s brief includes no cite for the assertions in these two sentences, and AT&T Florida does not believe any record evidence supports the assertions.

9. Page 69, footnote 79. The two items cited in that paragraph are not in the record, and their availability on the internet does not mean CA can rely on them even though they are not in the record.

10. Page 69, the assertion that, “these incidents also occurred well before the NEBS standards were developed to prevent exactly this sort of occurrence.” The assertion is based on a report cited in footnote 79 that is not in the record.

11. Page 69, the assertion that “for nearly three decades there have been no further incidents of this type in any ILEC central office anywhere in the nation.” CA’s brief includes no cite for the assertion in the sentence, and AT&T Florida does not believe any record evidence supports the assertion.

12. The passage starting on page 71 (“In fact, the former CLEC . . .”) and ending on page 72 (“ . . . unavailable for adoption.”). CA’s brief includes no cite for the assertions in this sentence, and AT&T Florida does not believe any record evidence supports the assertions.

13. Page 92, the sentence starting “To illustrate . . .” and ending “to obtain the funds.” CA’s brief includes no cite for the assertions in this sentence, and AT&T Florida does not believe any record evidence supports the assertions.

14. Page 99, the sentence starting “However, Pellerin asserts . . .” and ending “how that is impossible.” CA’s brief characterizes testimony of AT&T Florida witness Pellerin but includes no cite to Ms. Pellerin’s testimony. This is not mere carelessness. Rather, CA’s factual assertion that “she declines to explain how that is impossible” is flatly wrong. See Pellerin Rebuttal at 27, line 22 – 28, line 3.

15. Page 108, the first full paragraph, starting “Finally, CLECs are generally exempt . . .” and ending “. . . severely prejudice CA.” CA’s brief includes no cites for the assertions in this paragraph, and AT&T Florida does not believe any record evidence supports the assertions

16. Page 111, the assertion near the end of the page that “most CLECs in Florida are already exempt from taxes.” CA’s brief includes no cite for this assertion, and AT&T Florida does not believe any record evidence supports the assertion.

17. Page 114, the passage beginning “Therefore, CA has established . . .” and ending “. . . being paid for it.” CA’s brief includes no cite for the assertions in these three sentences, and AT&T Florida does not believe any record evidence supports the assertions.

18. Page 125, the sentence starting “Ray has testified that . . .” and ending “. . . not charged in this manner.” CA’s brief states (at 125 n. 134) that the testimony is in the Ray Rebuttal, but that is not correct.

19. Page 125, the sentence starting “It seems clear . . .” and ending “. . . to those charges.” The sentence is based on the assertion that “AT&T has admitted that both older and

newer adopted ICAs contain CA's language." The brief provides no cite for that assertion, and the assertion is wrong.

20. Page 140, the assertion that "legacy TDM trunks are less scalable and more expensive for the CLEC." CA's brief includes no cite for this assertion, and AT&T Florida does not believe any record evidence supports the assertion.

21. Page 142, the first full paragraph, starting "Regardless of which . . ." and ending ". . . its assets in that manner." CA's brief includes no cite for the assertions in this paragraph, and AT&T Florida does not believe any record evidence supports the assertions.

22. Page 158, last full paragraph, starting "Contrary to its assertions . . ." and ending ". . . from the list." CA's brief includes no cite for the assertions in this paragraph, and AT&T Florida does not believe any record evidence supports the assertions.

23. The passage starting on page 160 ("If AT&T included . . .") and ending on page 161 (" . . . negotiation phase."). CA's brief includes no cites for the assertions in these two sentences, and AT&T Florida does not believe any record evidence supports the assertions.

24. Pages 180-181, the sentence starting "Clearly, AT&T's proposed language . . ." and ending ". . . impose upon CA." CA cites no record evidence, and there is none, to support the assertion that AT&T Florida permits its CLEC affiliates – which buy services from AT&T Florida for resale on the same terms that AT&T Florida offers CA – to resell the services to their affiliates.

25. Page 182, the sentence starting, "Although AT&T has vaguely asserted . . ." and ending ". . . does not so indicate." The assertion that "it has not shown any evidence that this is the case" is not supported by record evidence, which in fact shows the contrary. See Exh. 41, AT&T Response to CA Interrogatory 111 (Hearing Exhibits at 1475).

For the reasons set forth above, AT&T Florida respectfully requests that the Commission enter an Order striking the exhibits to CA's brief and the passages identified above from CA's brief and directing CA to re-file its Post-Hearing Brief without the four exhibits that were improperly attached to the brief as originally filed and with all passages identified above deleted. To the extent that CA may wish to delete additional language from its brief in light of the mandatory deletions, it should be permitted to do so, but CA should not be permitted to add anything to its brief, either to replace the deleted language or otherwise.³

AT&T Florida has conferred with Counsel for Communications Authority as required by Rule 28-106.204(3), Florida Administrative Code. Counsel for Communications Authority indicated that he will likely object to the instant Motion.

Respectfully submitted, this the 19th day of June, 2015.

Dennis G. Friedman
Michael T. Sullivan
Mayer Brown LLP
71 S. Wacker Drive
Chicago, IL 60606
(312) 782-0600

By: s/Tracy W. Hatch

Tracy W. Hatch
Florida Bar No. 449441
c/o Elise R. McCabe
150 South Monroe Street
Suite 400
Tallahassee, FL 32301
(305) 347-5558
th9467@att.com

Attorneys for AT&T Florida

³ CA knew full well that it was improper to rely on purported evidence that was not in the record, but it chose to do so anyway, apparently with the expectation that the worst that would happen would be that the Commission would neutralize the offense by striking the inappropriate items from the record. Should the Commission wish to discourage parties from taking such a cavalier approach to complying with its rules, Section 120.569(1)(e), Florida Statutes, provides the Commission a mechanism to do so. That statute allows the Commission to sanction a party's improper conduct through imposition of attorney's fees caused by the need to address the improper conduct.

Motion to Strike

Exhibit 1

HATCH, TRACY W (Legal)

From: Lee Eng Tan <LTAN@psc.state.fl.us>
Sent: Wednesday, June 10, 2015 10:53 AM
To: HATCH, TRACY W (Legal); Dennis G. Friedman (dfriedman@mayerbrown.com)
(dfriedman@mayerbrown.com); kris@LOKT.net
Cc: Leslie Ames
Subject: 140156 - Briefs

Good Afternoon,

Staff has noted that Communications Authority has stated that issue 43(ii) is resolved , however, AT&T Florida has provided a position for this issue. When this occurs, staff treat the issues as unresolved for purposes of the recommendation. However, in the interest of resolution, please let me know if issue 43(ii) has been resolved between CA and AT&T Florida.

In addition, please note that any attachment added to the brief that was **not included in the hearing record**, cannot be considered in the recommendation. As far as staff understands, the attachments provided by CA are new information not in the hearing record. The PHO did agreed to allow the DPL to be attached to the brief, for ease of use, although we note that the DPL was not added to either brief.

Regards,

Lee Eng Tan
Senior Attorney
Office of the General Counsel
(850) 413-6185
ltan@psc.state.fl.us