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December 22, 1998

BY HAND DELIVERY

Ms. Blanca Bayo, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 981016-TX

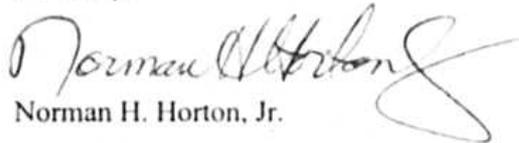
Dear Ms. Bayo:

Enclosed for filing in the above captioned docket on behalf of Utilicore Corp. are an original and fifteen copies of a Response to Motion to Dismiss.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,


Norman H. Horton, Jr.

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EPSC BUREAU OF RECORDS

ACK _____

AFA _____

APP _____

CAP _____ NHH/amb

CMH _____ Enclosures

cc: Andrew C. Hall, Esq.
Parties of Record

CTR _____

EAG _____

LEG 1 _____

LIN _____

OPC _____

RCH _____

SEC 1 _____

WAS _____

OTH _____

DOCUMENT NUMBER-DATE

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RECORDS AND REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for certificate)
to provide alternative local exchange)
telecommunications service by)
American Phone Corporation.)
_____)

DOCKET NO. 981016-TX
Filed: December 22, 1998

RESPONSE TO MOTION TO DISMISS

COMES NOW, protestant Utilicore Corp. and files this response to the Motion to Dismiss filed by American Phone Corp (APC). In response, Utilicore would show:

1. On November 16, 1998, Utilicore, a certificated ALEC, filed a formal protest to Order No. PSC 98-1464-FOF-TX, a proposed agency action (PAA) order granting an ALEC certificate to American Phone Corp. Attached to the letter protest were copies of correspondence and a complaint filed by Utilicore.

2. On or about December 12, 1998, APC filed a Motion to Dismiss asserting basically that Utilicore had failed to demonstrate how its substantial interests were affected and that the protest was not in substantial compliance with the requirements of Rule 28-106.201, Florida Administrative Code.

3. American Phone is attempting to put form over substance. The correspondence and attachments present the basis for the protest and demonstrate that the interests of Utilicore and the public will be adversely affected by the issuance of the certificate to American Phone because APC is and has utilized assets and arrangements of Utilicore to support its certification. It is incumbent upon the applicant, APC, to demonstrate that it has sufficient technical, financial and managerial capability to provide service and, as reflected in the complaint and release from the SEC, the FPSC should question whether that burden has been met. The FPSC is not required to issue a certificate

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unless these criteria are met. Utilicore would submit that there is a basis for the protest and the Motion to Dismiss should be denied.

For the reasons cited, Utilicore requests that the Motion to Dismiss be denied and that the Commission consider the protest filed by Utilicore.

Respectfully submitted.



NORMAN H. HORTON, JR.
Messer, Caparello & Self, P.A.
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and

ANDREW C. HALL
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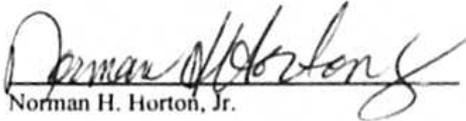
ATTORNEYS FOR UTILICORE CORP.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Utilicore Corp.'s Response to Motion to Dismiss in Docket No. 981016-TX has been furnished by Hand Delivery (*) and/or U.S. Mail to the following parties of record this 22nd day of December, 1998:

Tina Watts, Esq.*
Division of Legal Services
Room 370, Gunter Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Mr. Thomas M. Beard
American Phone Corporation
244 Shoppint Avenue, Suite 166
Sarasota, FL 34237


Norman H. Horton, Jr.