

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FILED/ACCEPTED

JUL 18 2007

Federal Communications Commission  
Office of the Secretary

In the Matter of	)	
	)	
Arkansas Cable Telecommunications Association, et al.	)	EB Docket No 06-53
	)	
<i>Complainants,</i>	)	EB-05-MD-004
	)	
v.	)	
	)	
Entergy Arkansas, Inc.	)	
	)	
<i>Respondent.</i>	)	

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JUL 17 2007

Federal Communications Commission  
Bureau / Office

TO: HON. ARTHUR I. STEINBERG

**UTILITY SUPPORT SYSTEMS, INC.'S REPLY IN SUPPORT OF ITS  
MOTION TO STRIKE  
COMPLAINANTS' MOTION TO COMPEL**

Utility Support Systems, Inc. ("USS"),<sup>1</sup> by its attorneys and as part of its special appearance, files this Reply in Support of its Motion to Strike the Motion to Compel Utility Support System Inc.'s Compliance with Subpoena Duces Tecum ("Motion to Compel") filed by Complainants Arkansas Cable Telecommunications Association, et al., ("ACTA") on July 9, 2007. This Reply responds to those claims made by ACTA in its Opposition filed July 13, 2007.

**ARGUMENT**

ACTA's Opposition does nothing to refute the clear language of the Communications Act and the Commission's Rules, which permit enforcement of a subpoena only by an appropriate federal court. See 47 U.S.C. § 409(f) ("And in case of disobedience to a subpoena (sic) the Commission, or any party to a proceeding before the Commission, may invoke the aid

<sup>1</sup> USS is not a party to the above-referenced action.

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of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.”); 47 C.F.R. § 1.340 (“In case of disobedience to a subpoena (sic), the Commission or any party to a proceeding before the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.”)

There is no authority in the Commission’s organic statutes for the Commission to enforce the terms of its subpoenas and ACTA cannot find a single instance where the terms of a subpoena issued by the authority of the Commission were subsequently enforced by the Commission, and not a federal court. Indeed, the only case to which it can cite only illustrates the Commission’s lack of such authority.

**I. The Communications Act and the Commission’s Rules Contemplate Enforcement of Subpoenas Only By a Federal Court.**

ACTA makes much of the word “may” in 47 U.S.C. § 309(f) and 47 C.F.R. § 1.340, and argues that it permits enforcement of Commission subpoenas either by the Commission or a federal court. As ACTA reads the statute and rule, the Commission *may* go before a Court, or the Commission *may* enforce the terms of the subpoena *sua sponte*. Yet, ACTA cannot cite to a single example where the Commission enforced the terms of a subpoena. Further, it cannot explain why, in the cases cited by USS, the FCC would go to the trouble of seeking enforcement before a federal court if the FCC itself possessed that power, or why the Commission would note that its method of forcing compliance is via the use of the federal courts.<sup>2</sup>

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<sup>2</sup> *In the matter of Commercial Realty St. Pete, Inc. Application for Licenses in the Interactive Video and Data Services*, 10 FCC Rcd 4277, ¶ 5 (1995) (“The U.S. District Court for the District of Columbia subsequently granted the government’s petition to enforce the subpoenas against the parties.”); *FCC v. Schreiber*, 201 F.Supp. 421 (D.C. 1962) (court finding jurisdiction over Commission enforcement of subpoena); *FCC v. Cohn*, 154 F.Supp. 899 (S.D.N.Y. 1959) (“This is a proceeding brought by the Federal Communications Commission to enforce administrative subpoenas duces tecum...”); *In Re Application of Dorothy O. Schulze and Deborah Brigham*, 5 FCC Rcd 7381, n. 2 (1990) (“We recognize that in view of recent events, there is a risk that some individuals may not

As these cases make clear, the word “may” conveys the fact that, if the Commission or a party seeks to enforce the terms of a subpoena, it may do so before a federal court. Or, it may choose not to enforce those terms. In either event, ACTA’s attempt to seek enforcement before the Commission is inappropriate and its Motion to Compel must be struck.

## **II. ACTA’s Reference to Forfeiture Orders is Inapposite.**

ACTA’s attempt to conflate the Commission’s power to impose sanctions with its power to enforce subpoenas is unavailing. Unable to find any example of the Commission enforcing the terms of a subpoena, ACTA attempts to recast its Motion to Compel into a motion seeking sanctions. ACTA’s wordsmithing, however, does nothing but confirm the very limits of the Commission’s power.

ACTA relies solely on *In the Matter of 1<sup>st</sup> Source Information Specialists, Inc.*, 21 FCC Rcd 8193 (2006). The differences between that case and the instant one are many.

First, the case involved an investigation by the Commission into behavior of several entities, including LocateCell. In this case, USS is not the target of any investigation by the Commission.

Second, LocateCell refused to comply with the subpoena duces tecum served upon it by the Commission by producing only a simple set of corporate documents. In this case, USS has fully complied with the subpoena served upon it by ACTA by providing hundreds of thousands of responsive documents. In fact, ACTA has not specified any single category of documents, or any period of documents, lacking from USS’ production.

Third, the Commission’s forfeiture *did not in fact compel the production of any additional documents* from LocateCell. The Commission assessed a forfeiture against

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cooperate in these further proceedings. Appropriate remedies, however, are available. See, for example, 47 C.F.R. § 1.340 (use of courts to enforce a subpoena.)” (parenthetical in original, emphasis supplied).

LocateCell for its failure to turn over all documents, but the Commission did not (and could not) force such a production.

### **III. ACTA Is Free to Seek Relief Before a Federal Court.**

ACTA's Motion to Compel began ostensibly as an attempt on its behalf to compel USS to produce documents that it imagines exist. Now, in its Opposition, ACTA has morphed its Motion to Compel into a suggestion to the Administrative Law Judge that he should instead enforce the subpoena only through a lengthy, costly and unnecessary process, which could end at the same place—federal court. Specifically, ACTA now asks the Administrative Law Judge to issue an order telling USS to “obey the subpoena,” and to produce reams of irrelevant documents for inspection. Next, and if USS does not obey (or in fact cannot obey), ACTA desires the Administrative Law Judge: (1) to threaten USS with sanctions; (2) to levy sanctions if ACTA is not satisfied; and finally (3) to instruct the Commission to take the issue to a federal court—not as a means of compulsion as set forth in the law, however, but for contempt. Opposition at 4 (“face a Commission request in federal court for a contempt order”).

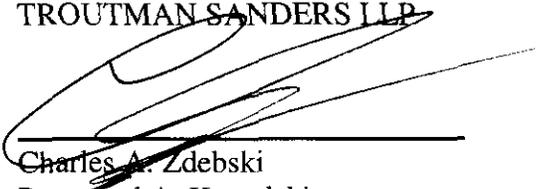
If ACTA believes it is entitled to additional documents, and does not simply seek to bully USS with threats of forfeiture and the high costs of a prolonged FCC side-litigation, it is free to take the issue up directly with an appropriate federal court as contemplated by law. Or it may not. In either event, it cannot force the Commission to do its bidding.

**CONCLUSION**

USS has complied in total with the ACTA subpoena.<sup>3</sup> Any effort to compel USS to provide further documents must be pursued in an appropriate federal court, namely, the United States District Court for the Middle District of Georgia.

Respectfully submitted,

~~TROUTMAN SANDERS LLP~~



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<sup>3</sup> USS reiterates that if the Administrative Law Judge denies USS' Motion to Strike, that it be granted 10 days to respond to the Motion to Compel or to seek other appropriate relief.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 17th day of July, 2007 served a copy of the foregoing upon the persons listed below by hand delivery\*, e-mail\*\*, and/or first class mail\*\*\*.

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