

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition and complaint) DOCKET NO. 931138-TL
of Florida Independent Directory) ORDER NO. PSC-94-0641-FOF-TL
Publishers to amend Directory) ISSUED: May 25, 1994
Publishers Database Service)
Tariff of BELLSOUTH)
TELECOMMUNICATIONS, INC. d/b/a)
SOUTHERN BELL TELEPHONE AND)
TELEGRAPH COMPANY.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

ORDER DENYING MOTION TO DISMISS

BY THE COMMISSION:

On April 1, 1993, Order No. PSC-93-0485-FOF-TL was issued approving BellSouth Telecommunications, Inc., d/b/a/ Southern Bell Telephone and Telegraph Company's (Southern Bell) tariff filing introducing Directory Assistance Database Service (DADS) and Directory Publishers Database Service (DPDS). No protest was filed and the order became effective on April 22, 1993.

On November 24, 1993, the Florida Independent Publishers (Publishers) filed a Petition and Complaint to Amend Directory Publishers Database Service Tariff of Southern Bell. Subsequently, on December 20, 1993, Southern Bell filed a Motion to Dismiss the Petition and Complaint. On January 3, 1994, Publishers filed a response to Southern Bell's Motion to Dismiss.

Summary of the Petition and Complaint

In the Petition and Complaint, Publishers asks the Commission to amend and otherwise order revisions to the DPDS tariff of Southern Bell and to hold a hearing, pursuant to Section 120.57(1), Florida Statutes, on the subject as necessary. Publishers claims that the tariff is presently unjust, unreasonable, unjustly discriminatory, unduly preferential, predatory, and not otherwise

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in the public interest. Publishers also states that it was denied actual notice of the DPDS tariff and that had such notice been provided, the Petition/Complaint may have been unnecessary.

Summary of the Motion to Dismiss

Southern Bell argues that the Publishers' Petition/Complaint fails to set forth any facts that, if proven, would establish a legitimate basis for a complaint under Rule 25-22.036, Florida Administrative Code. Southern Bell claims that the Petition/Complaint is nothing more than an untimely protest of the Commission's order approving the DPDS tariff. Regarding Publishers' claim that Southern Bell failed to give notice of the tariff, Southern Bell responds that Publishers fails to state any basis that would obligate Southern Bell to give such notice.

Summary of Publisher's Response to Motion to Dismiss

Publishers agrees with Southern Bell that it has not identified the violation of any Commission rule or order, but points out that it has alleged violations of nine different sections of Chapter 364, Florida Statutes, that establish the basis for a complaint. Publishers also claims that it has met the minimum pleading requirements under Rule 25-22.036(7).

Publishers responds to Southern Bell's claim that the Petition/Complaint is an untimely protest by pointing out that new proceedings challenging existing tariffs are authorized under section 364.14, Florida Statutes. Publishers explains its claim of lack of notice as being relevant to the "onerous" nature of the DPDS tariff and reflects the unfairly discriminatory and anticompetitive content of Southern Bell's tariff.

Publishers points out that Southern Bell's Motion to Dismiss did not dispute the right to petition the Commission for a change in a tariff. Publishers concludes, therefore, that even if the complaint aspects are dismissed there is still sufficient legal basis for the proceeding to continue on the basis of the petition content of the Petition and Complaint.

Decision

The pleading which is the subject of the motion to dismiss has been styled as a "Petition and Complaint", and there has been no separation in the body of the pleading between a petition section and a complaint section. Subsection (2) of Rule 25-22.036. states that the initial pleading "shall be entitled as either an

application, petition, complaint, order, or notice, as set forth in subsections (3), (4), (5), and (6)." Although the rule does not state that a pleading cannot be called more than one of the listed titles, combining titles can be confusing, especially when no attempt has been made to separate the pleading into sections which address each title. Therefore, while pleadings such as the one under consideration here should be discouraged, we do not believe it should be dismissed as facially invalid.

Subsection (4) of Rule 25-22.036 addresses the requirements of a petition. Under the rule a substantially affected person can seek Commission action "to change the rates or service of a person subject to Commission jurisdiction, or seek some other Commission action not otherwise specified in these rules." In this case the petitioner, Florida Independent Publishers (Publishers), is substantially affected because they buy the tariffed services from Southern Bell in the course of their business activities. Further, the petition gives rise to disputed issues of law and fact which must be resolved.

Complaints, on the other hand, require some allegation of misconduct. Subsection (5) of Rule 25-22.036 addresses complaints and states:

A complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainants' substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order.

The key question in determining whether the pleading is an appropriate complaint is what act or omission by Southern Bell is being complained about. The petition/complaint alleges that the tariff itself violates several sections of the statute, and that Southern Bell failed to give Publishers actual notice of the tariff. Other than those two allegations, Publishers has not complained of any other wrongdoing by Southern Bell. In this case Southern Bell had no legal obligation to give Publishers notice of the tariff filing so the notice question alone would not be a sufficient basis for a complaint. Thus, the remaining issue is whether the tariff itself, which was approved by the Commission, is an "act or omission" which violates the principles set forth in Chapter 364.

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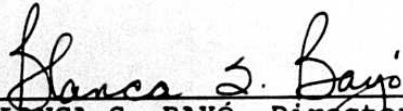
The DPDS tariff was approved by Order No. PSC-93-0485-FOF-TL, issued April 4, 1993. Given the fact that the Commission found the tariff appropriate, and that no other acts or omissions have been alleged, we believe that the pleading is not appropriate as a complaint. However, we find that the pleading meets the requirements for an appropriate petition under the rules. Therefore, Southern Bell's Motion to Dismiss will be denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company's Motion to Dismiss The Petition and Complaint of The Florida Independent Directory Publishers is hereby denied. It is further

ORDERED that this docket will remain open.

By ORDER of the Florida Public Service Commission, this 25th day of May, 1994.



BLANCA S. BAYO, Director
Division of Records and Reporting

(S E A L)

WEW

Commissioner Luis J. Lauredo dissented.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.