

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Alexander ) DOCKET NO. 950235-TL  
Tomas against BellSouth ) ORDER NO. PSC-96-0271-PHO-TL  
Telecommunications, Inc. d/b/a ) ISSUED: February 26, 1996  
Southern Bell Telephone and )  
Telegraph Company regarding )  
charges for rotary service. )  
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**PREHEARING ORDER**

Pursuant to Notice, a Prehearing Conference was held on February 16, 1996, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

Richard D. Melson, Esquire, Hopping Green Sams & Smith,  
P. A., P.O. Box 6526, Tallahassee, Florida 32314.  
On behalf of the Petitioners

J. Phillip Carver, Esquire, 400 - 150 South Monroe  
Street, Tallahassee, Florida 32302.  
On behalf of BellSouth Telecommunications, Inc.

L. Michael Billmeier, Esquire, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
Florida 32399-0863  
On behalf of the Commission Staff.

**PREHEARING ORDER**

I. CASE BACKGROUND

This proceeding was initiated by a complaint by Alexander Tomas against BellSouth Telecommunications, Inc. Mr. Tomas claims BellSouth is incorrectly applying its rotary service tariff and overcharging customers. By Notice of Proposed Agency Action Order No. PSC-95-0515-FOF-TL, issued April 26, 1995, the Commission dismissed Mr. Tomas' complaint. On May 17, 1995, the Petitioners<sup>1</sup>

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<sup>1</sup> The Petitioners in this docket are Pizza Hut of America, Inc., Walgreen Co., Coldwell Banker Residential Real Estate, Inc., Calvary Chapel of Ft. Lauderdale, Calvary Church of Sunrise, First

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filed protests to the Commission's action and this matter was set for hearing. On December 21, 1995, by Order No. PSC-95-1577-PCO-TL, the joint motion to bifurcate the hearing filed by BellSouth and the Petitioners was granted. Pursuant to that Order, this hearing will be limited to generic tariff interpretation issues and determining whether or not a refund is appropriate.

## II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

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Lutheran Church, Kent Security, Florida Radio Rental, Greenwich Condominium Association, Tri-County Concrete Products, Valley Forge Fabrics, Ocean Ranch Hotel, and Christ Lutheran Church.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

#### Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

### III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

### IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
<u>Direct</u>		
Alexander Tomas	Petitioners	All
George William Freeman	BellSouth	All
<u>Rebuttal</u>		
Alexander Tomas	Petitioners	All
George William Freeman	BellSouth	All

V. BASIC POSITIONS

Petitioners: BellSouth improperly applies its rotary service tariff by billing customers on a per-line basis for every line in their rotary groups despite the fact that the service, as described in BellSouth's tariff, is not provided on the last line in a typical rotary group. BellSouth attempts to justify this misbilling on the grounds that "circular rotary," in which each line in the group is equipped with rotary service, is available as an option. BellSouth's tariff, however, does not indicate that any rotary service options are available. BellSouth improperly defaults customers to a less valuable arrangement, which does not comply with the tariff, in which the rotary hunt "terminates" at the last line in the hunt group.

Customers who have been affected by BellSouth's failure to provide and bill for rotary service in accordance with its tariffs are entitled to refunds of the rotary charges (with taxes and interest) to the extent that the service they have received is different from the service described in BellSouth's tariff.

BellSouth: BellSouth provides Rotary Service by charging for each access line in a rotary group. These charges are properly applied under BellSouth's currently approved tariff. Therefore, customers have not been overcharged for Rotary Service and are not entitled to a refund.

Staff: No position at this time.

VI. ISSUES AND POSITIONS

ISSUE 1: Is Southern Bell properly applying its tariff for rotary service if a rotary charge is applied to the last line in a rotary group?

Petitioners: No. BellSouth is not properly applying its tariff to the vast majority of rotary service customers to whom it furnishes what it calls "terminal rotary." Under the tariff, rotary service is defined as an arrangement under which a call to a busy line in a group can be terminated to any other non-busy line in the group. Under the tariff, rotary service charges apply only to lines that are "equipped with" this call-forwarding type of feature. Under the terminal rotary arrangement provided by BellSouth, a call to the last line in a rotary group does not hunt to any other line in the group. BellSouth nevertheless imposes a rotary service charge

on that last line, despite the fact that it is not equipped with rotary service.

BellSouth does properly apply its tariff to the small percentage of customers to whom it furnishes "circular rotary." Under this arrangement, which complies with the tariff definition of rotary service, a call to any busy line in the group will attempt to complete to every other line in the group. It is important to note that while BellSouth claims to make this "circular rotary" arrangement available as an option, there are no optional arrangements described in the rotary service tariff, and the "optional" circular rotary is the only form of the service which complies with the tariffed definition of rotary service.

BellSouth: Yes. BellSouth's method of charging for Rotary Service is proper under the existing approved tariff.

Staff: No position at this time.

ISSUE 2: Are subscribers entitled to a refund if Southern Bell is not properly applying its tariff for rotary service? If so, how should the refund be calculated?

Petitioners: Yes, subscribers are entitled to a refund if BellSouth charges them for a service which they are not receiving. The refund should be equal to the full rotary service charges which have been improperly billed to a line which is not equipped with rotary service (i.e., the last line in every terminal rotary hunt group). In addition, a partial refund of rotary service charges would be appropriate for other lines in terminal hunt groups which are not fully equipped with the tariffed service (i.e. lines which hunt to less than every other line in the group).

All refunds should include the refund of any associated taxes, and interest at the statutory rate on the overcharges and taxes from the date of payment until the date of the refund.

BellSouth: No. Even if BellSouth were not properly applying its tariff, subscribers are not entitled to a refund. Under the residual pricing that has historically been applied to this service, the service must, in the aggregate, produce a certain amount of revenue. If this revenue requirement were divided among fewer lines, the charge applied to each line would be higher. Therefore, on average, customers would pay the same amount for service.

Staff: No position at this time.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Tomas	Petitioners	AT-1	BellSouth GSST \$3.6 (Rotary Service)
		AT-2	Sample Rotary Service Bill (Calvary Chapel of Ft. Lauderdale)
		AT-3	BellSouth GSST \$12.1 (Station Hunting Arrangements for ESSX)
		AT-4	Other Examples of BellSouth Tariffs Reflecting Multiple Service Options

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

The parties have not entered into any stipulations at this time. On December 21, 1995, by Order No. PSC-95-1577-PCO-TL, the joint motion to bifurcate the hearing filed by BellSouth and the Petitioners was granted.

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IX. PENDING MOTIONS

There are no pending motions at this time.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 26th day of February, 1996.

  
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J. TERRY DEASON, Commissioner and  
Prehearing Officer

( S E A L )

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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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer;



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2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.