

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BLUMS OF BOCA,)	DOCKET NO. 900721-TL
against Southern Bell Telephone and)	
Telegraph Company regarding alleged)	ORDER NO. 23928
unauthorized "Leaky PBX" Charges)	
)	ISSUED: 12-24-90

The following Commissioners participated in the disposition of this matter:

MICHAEL MCK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK S. MESSERSMITH

NOTICE OF PROPOSED AGENCY ACTION
ORDER DENYING COMPLAINT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On August 22, 1990 Blums of Boca, Inc. (Blums of Boca) filed a Complaint against Southern Bell Telephone Company (Southern Bell or the Company) concerning disputed Leaky PBX charges. Southern Bell's Response was due on September 17, 1990. Southern Bell requested an extension of time since it was served with a copy of the Complaint at an inappropriate address and this impeded the Company's ability to respond adequately. Blums of Boca did not oppose Southern Bell's Motion for Extension of Time. The Company responded on October 8, 1990, with a Motion to Dismiss and Response to the Blums of Boca Complaint.

As the Motion for Extension of Time was unopposed by Blums of Boca, and was the result of this Commission having mailed the Complaint to the wrong address, it is appropriate to grant the Motion and to allow Southern Bell to respond.

In its October 8, 1990, Motion to Dismiss and Response, Southern Bell does not argue that there are no issues of material fact. Rather, the Company argues that notice to Blums of Boca concerning Leaky PBX charges may be inferred from the facts surrounding the Company's mailing system and compliance with

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ORDER NO. 23928
DOCKET NO. 900721-TL
PAGE 2

Commission requirements. This argument raises questions of material facts subject to dispute. Therefore, dismissal of the Blums of Boca Complaint is inappropriate.

A Leaky PBX is a PBX switch that can be used to avoid long distance charges. To address this problem, this Commission provided for PBX owners to be charged for leaks. This is done through mandatory message rate charges. The assumption is that all systems leak. However, a PBX customer can avoid these charges by certifying in writing that it does not leak. Before initiating these charges, the local exchange companies were required to notify PBX customers of the charge and how to avoid it.

In its August 22, 1990, Complaint against Southern Bell, Blums of Boca asserts that Southern Bell initiated a Leaky PBX charge on Blums of Boca's telephone billing without notice or explanation and that such charges were erroneous and unfounded. Blums of Boca further alleges that Southern Bell ceased such charges when they were contested in March of 1989. Blums of Boca contends that its Southern Bell PBX equipment did not have the capability to leak and seeks reimbursement of \$4,281.51 which represents Southern Bell's billing from April 20, 1986, to March 20, 1989. It is Blums of Boca's position that it never received any of Southern Bell's PBX certification mailings.

Southern Bell's October 8, 1990, Response includes the Leaky PBX charge notification schedule for PBX customers from Order No. 15480. Southern Bell asserts that it complied with the same. Southern Bell argues that the notices were computer generated and submitted a computer print-out of the addresses to which such notices were sent. Southern Bell contends that since its other customers received the notices and Blums of Boca, with its correct address, was on the computerized list to receive those notices, the logical inference is that Blums did receive them.

Southern Bell has refunded \$400.23 for Leaky PBX charges to Blums of Boca back to March 28, 1989, the date that the required certificate was signed, but will not refund the amount billed for Leaky PBX prior to Blums of Boca's signing of the certificate.

Southern Bell concludes that it fully complied with Order No. 15327. Order No. 15327 provides that should a customer fail to certify that it does not leak then the mandatory message rate

ORDER NO. 23928
DOCKET NO. 900721-TL
PAGE 3

charges would apply on the 61st day. The Company concludes that Blums of Boca failed to respond to the notice and certification, that all objective evidence indicates it received and, in accord with this Commission's Orders, Southern Bell properly billed and collected the mandatory message rate charges.

Blums of Boca has an equitable argument in asserting that it has been required to pay thousands of dollars in Leaky PBX charges when it did not use its PBX to leak. However, Southern Bell appears to have complied with all of our Orders concerning Leaky PBX. Thus, Southern Bell should not be required to refund the disputed charges.

Based on the foregoing, it is


ORDERED by the Florida Public Service Commission that Southern Bell Telephone and Telegraph Company's Motion for Extension of Time to file its Answer is granted. It is further

ORDERED that Southern Bell's Motion to Dismiss Blums of Boca's Complaint is denied. It is further

ORDERED that Southern Bell is not required to refund \$4,281.51 to Blums of Boca for Leaky PBX charges. It is further

ORDERED that this docket shall be closed if no protest is filed in accordance with the requirements set forth below.

By ORDER of the Florida Public Service Commission, this 24th day of DECEMBER, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)
CWM

Commissioner Messersmith dissented in the decision to deny Blums of Boca's Complaint.

ORDER NO. 23928
DOCKET NO. 900721-TL
PAGE 4

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 15, 1991.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by 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

ORDER NO. 23928
DOCKET NO. 900721-TL
PAGE 5

copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.