

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of GHF Associates ) DOCKET NO. 910486-TL  
against SOUTHERN BELL TELEPHONE AND ) ORDER NO. 24654  
TELEGRAPH COMPANY regarding billing ) ISSUED: 6/11/91  
for ESSX service )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
J. TERRY DEASON  
BETTY EASLEY  
GERALD L. GUNTER  
MICHAEL MCK. WILSON

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.

Case Background

On January 9, 1991, Mr. Steven M. Gray of GHF Associates filed a complaint against Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) questioning the validity of the billing for ESSX service for 30 lines listed for Audio Adventures and billed to GHF Associates. Mr. Gray asserts that in March 1990 he had requested that Southern Bell temporarily suspend his ESSX service. He states that he later received a bill for \$14,875 for termination charges and was informed that Southern Bell does not suspend, only terminates ESSX service. Mr. Gray requests a refund of the amount paid, and asks that he be granted relief from the charges billed pursuant to the termination of service.

Southern Bell states that Mr. Gray contacted Southern Bell on March 26, 1990, and placed an order to disconnect the ESSX service. On March 28, 1990, a company representative gave Mr. Gray the estimated cost of terminating the contract. On March 29, 1990, Mr. Gray was given the exact cost of terminating the contract, and the disconnect order was issued on March 30, 1990.

DOCUMENT NUMBER-DATE  
05810 JUN 11 1991  
PSC-RECORDS/REPORTING

On February 7, 1991, Consumer Affairs received a written request for an informal conference from Mr. Gray. That conference was held, pursuant to Rule 25-22.032(4), Florida Administrative Code, on March 25, 1991, in Miami. At that conference, Mr. Gray again stated that he had only requested a suspension of the ESSX service. He further stated that he was not informed that suspension was not allowed and that his service would be terminated with the addition of termination charges.

Southern Bell responded with a sworn affidavit from the service representative stating that she contacted Mr. Gray on March 29, 1990 regarding his termination request and reminded him that termination charges would apply. Additionally, the Company provided our Consumer Affairs representative with a copy of the ESSX service contract signed by Mr. Gray.

The parties also discussed Southern Bell's transfer of the outstanding bill of GHF Associates, to the account of John Fitzgibbon. Mr. Gray contends that in order to continue his business, he employed John Fitzgibbon as a business agent. Mr. Fitzgibbon was in an adjacent office, and obtained two telephone lines. Southern Bell reports that in March 1990, Mr. Gray requested a transfer of calls from the Audio Adventure service to Mr. Fitzgibbon's service. Southern Bell records showed that Mr. Fitzgibbon's account has the listed name of Telepay and an additional listing for Steven M. Gray. Mr. Gray's stationery also carried that number. On October 25, 1990, Southern Bell informed Mr. Gray that his outstanding charges would be transferred to the new number for which he was an additional listing. Southern Bell stated that Mr. Gray agreed to this.

#### Discussion of Issues

We must first decide whether Southern Bell acted properly in terminating the ESSX service of GHF Associates. Mr. Gray signed a contract on March 29, 1989, which included the provision that the ESSX service could not be suspended. Furthermore, Southern Bell's tariff A12.1.2(L) also prohibits suspension of ESSX service. Additionally, Southern Bell's reports and sworn affidavit confirm that Mr. Gray was contacted to verify his request and was even given the exact amount of the termination charges. The Company was acting in accordance with both its signed contract and its tariff

provisions. Therefore, we find that Southern Bell acted properly in terminating the ESSX service.

Additionally, we find that GHF Associates is responsible for payment of the termination charges incurred by the ESSX disconnect. The contract signed by Mr. Gray stated that termination charges would apply if the service was disconnected prior to the expiration of the contract. Southern Bell's tariff A12.1.6(C)(2) provides for termination charges for equipment or facilities disconnected prior to the expiration of the payment period. Tariff A12.1.6(E)(g)(2) provides that deferred charges such as installation charges, must be paid in full if service is disconnected prior to the expiration of the selected deferral period. We find that GHF Associates is responsible for the termination charges. The final bill of \$12,774.33 included \$9,980.81 in termination charges and a past due balance of \$2495.04. Mr. Gray had even sent a letter to Southern Bell on May 11, 1990, outlining a payment plan for termination charges. Mr. Gray made four payments totalling \$4,524.33. We find that GHF Associates is responsible for the balance due of \$8,273.75.

We also believe that the charges were properly transferred to the number on which Mr. Gray is an additional listing. Mr. Gray admitted that Mr. Fitzgibbon, an employee, established two telephone lines at the Madeira Avenue offices in order for Mr. Gray to continue his business operations. Southern Bell records indicate that on March 30, 1990, Mr. Gray requested that calls to his ESSX service, which he had terminated, be referred to Mr. Fitzgibbon's new account, which was listed as Telepay. On May 11, 1990, Mr. Gray sent a letter to Southern Bell outlining his payment plan for the termination charges. The letter was on Gray and Company stationery with the Telepay number. Southern Bell notified Mr. Gray in October 1990, that his outstanding charges of \$8,273.75 were being transferred to the present working service. Mr. Gray is continuing to receive service, even though the billing is in the name of John Fitzgibbon. Therefore, we find that Southern Bell properly transferred the outstanding balance to that account.

Finally, Mr. Gray asks for a refund of the payments made toward his outstanding balance. He contends that the termination of the ESSX service was executed without his knowledge or consent. However, Mr. Gray did not protest the termination charges at the time incurred. Southern Bell's records show that the service representative fully explained the termination charges. In

ORDER NO. 24654  
DOCKET NO. 910486-TL  
PAGE 4

addition, Mr. Gray acknowledged the charges by working out payment schedules with Southern Bell. We find that the termination charges were properly incurred, and that Mr. Gray is not due a refund.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Southern Bell Telephone and Telegraph Company acted properly in terminating the ESSX service of GHF Associates. It is further


ORDERED that GHF Associates, was responsible for the payment of termination charges upon termination of the ESSX service. It is further

ORDERED that the balance of the outstanding charges was properly transferred to the additional listed number of Steven M. Gray. It is further

ORDERED that GHF Associates request for a refund of the payments made for the ESSX service and elimination of the termination charges is hereby denied. It is further

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

By ORDER of the Florida Public Service Commission, this 11th  
day of JUNE, 1991.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

PAK

ORDER NO. 24654  
DOCKET NO. 910486-TL  
PAGE 5

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 July 2, 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 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.

MEMORANDUM

June 7, 1991

TO: DIVISION OF RECORDS AND REPORTING  
FROM: DIVISION OF LEGAL SERVICES (KURLIN) *pak TP*  
RE: DOCKET NO. 910486-TL

*24654*

-----  
Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER DENYING COMPLAINT in the above-referenced docket, which is ready to be issued.

PAK/mgf  
Attachment  
cc: Division of Communications  
910486a.mgf

*Protests  
due 7-2-91*

DOCUMENT NUMBER-DATE  
05810 JUN 11 1991  
PSC-RECORDS/REPORTING