

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Aristides) DOCKET NO. 940428-TL
Day against BELLSOUTH) ORDER NO. PSC-94-0716-FOF-TL
TELECOMMUNICATIONS, INC. d/b/a) ISSUED: June 9, 1994
SOUTHERN BELL TELEPHONE AND)
TELEGRAPH COMPANY regarding)
interruption of service.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER RESOLVING CUSTOMER 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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

On November 1, 1993, Mr. Aristides Day filed a complaint against BellSouth Telecommunications, Inc. D/B/A Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) with the Division of Consumer Affairs. Mr. Day alleged that Southern Bell improperly interrupted his service on July 21, 1993 and August 31, 1993.

After Mr. Day received his April bill from Southern Bell, he notified AT&T Communications of the Southern States, Inc. (ATT-C) that he disputed the toll charges, and mailed a payment to Southern Bell which did not include the disputed amount (\$55.88). However,

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Mr. Day included an advance payment of \$50.00 to cover Southern Bell charges while he was in Greece. He had notified Southern Bell on May 4, 1993 that he would be out of the country until late August. Since Southern Bell was not made aware of the dispute with ATT-C, it applied the advance payment toward the April bill leaving a \$5.88 balance.

Mr. Day's account continued to be billed during the time he was out of the country. Southern Bell records indicate that the May, June and July 1993 bills went unpaid. Subsequently, Southern Bell mailed a separate service interruption notice to Mr. Day on July 12, 1993. Mr. Day's account had a past due balance of \$287.48 which included the remaining balance of his April bill (\$5.88) and the entire May and June bills. No payments were received and service was interrupted on July 21, 1993. Service was restored at no charge after Mr. Day called Southern Bell from Europe. A notation was placed on the account to follow-up with the customer when he returned home.

The regular August bill and a separate service interruption notice for the amount then past due (\$639.28) was issued on August 17, 1993. Southern Bell attempted to reach Mr. Day by phone. On August 31, when no payment was received, the service was interrupted. Service was restored the same day after Mr. Day called to question the interruption. A notation on Southern Bell account records indicated that Mr. Day would call back about payment arrangements.

On September 1, 1993, ATT-C notified Southern Bell of a pending adjustment and that there might be additional adjustments. On September 21, 1993, ATT-C issued an adjustment of \$330.10. Mr. Day asked Southern Bell to adjust his account for \$600 due to the anguish caused by the service interruptions. On September 30, 1993, Southern Bell sent Mr. Day a letter denying his request. However, an adjustment of three months local service plus late payment charges was made on the account as a goodwill gesture.

On October 19, 1993, Mr. Day advised Southern Bell he would seek the \$600 credit from ATT-C. A notation was placed on the account to follow-up in seven days for the credit or a payment. Another service interruption notice for a past due balance of \$846.36 was mailed on October 28, 1993 since no payment or credit had been posted to the account.

On November 2, 1993, Mr. Day again informed Southern Bell he believed a \$600 adjustment for his inconvenience was appropriate. In a letter dated December 9, 1993, Southern Bell denied the request.

In a letter dated December 22, 1993, Consumer Affairs staff advised Mr. Day that Southern Bell had not violated any Public Service Commission Rules in the handling of the account and that all outstanding charges were due and payable to Southern Bell. ATT-C had credited Mr. Day's account in the amount of \$330.10 which, according to ATT-C, was all that was in dispute.

Southern Bell records indicate that, after receiving a copy of the Consumer Affairs' letter, the company sent the customer a specially generated service interruption notice on December 28, 1993. The notice gave until January 5, 1994 to pay the outstanding charges of \$873.76. On January 6, 1994, Mr. Day called Southern Bell and an extension was placed on the account until January 20, 1994. This would give Mr. Day time to discuss the contents of the December 22, 1993 letter from Consumer Affairs with Commission staff. Mr. Day called staff on January 6, 1994 and was given the proper procedure to follow if he wished to appeal staff's initial decision.

Mr. Day sent Southern Bell a partial payment of \$100 which was credited to his account on January 17, 1994. No further payments or contacts were made with Southern Bell or Consumer Affairs staff. Therefore, on February 9, 1994, service was interrupted. Service was restored the same day at no charge after Mr. Day called Southern Bell to dispute the interruption and agreed to make another partial payment. At that time Mr. Day advised he would request an informal conference with the Public Service Commission for further review of his complaint.

Mr. Day wrote Consumer Affairs on February 22, 1994 and requested an informal conference. The conference was held pursuant to commission rules on April 12, 1994 in Boca Raton, Florida. No settlement was reached.

II. DECISION

We find that Southern Bell did not violate any Commission Rules when it interrupted Mr. Day's service on July 21, 1993, August 31, 1993 and February 9, 1994.

Rule 25-4.113(1)(f), Florida Administrative Code, states in pertinent part, "...the utility may refuse or discontinue telephone service...for nonpayment of bills for telephone service..., provided that suspension or termination of service shall not be made without 5 working days' written notice to the customer, except in extreme cases. The written notice shall be separate and apart from the regular monthly bill for service."

The first interruption occurred on July 21, 1993. A separate service interruption notice was mailed on July 12, 1993 in accordance with rule 25-4.113(1)(f), Florida Administrative Code. Mr. Day contends that service was improperly interrupted since there were ATT-C charges in dispute. However, since Southern Bell was not aware of the dispute, service was not improperly interrupted. Mr. Day stated, at the informal conference, that he did not feel it should be the customer's responsibility to contact both ATT-C and Southern Bell when disputing ATT-C charges. Also, that if Southern Bell bills for ATT-C, it should be worked out between the two (2) companies when a customer disputes any charges.

Commission Rules do not address the billing and collection agreements between long distance companies and local exchange companies. Furthermore, Commission Rules do not address interruption of service for disputed charges. Rule 25-22.032(10), Florida Administrative Code, however, prohibits interruption during the pendency of Public Service Commission complaint proceedings. Local exchange companies do have the authority to interrupt service for nonpayment of an interexchange carrier's toll charges if there is no knowledge of disputed charges. Therefore, since Southern Bell gave five (5) working days notice before interrupting service, and it had not been notified of the disputed AT&T charges, it did not violate any Commission Rules when it interrupted service on July 21, 1993.

The second interruption occurred on August 31, 1993. A separate service interruption notice for the amount past due (\$639.28) was issued on August 17, 1993. The interruption was not improper since it was executed in accordance with rule 25-4.113(1)(f), Florida Administrative Code.

The third interruption occurred on February 9, 1993. A specially generated service interruption notice was issued on December 28, 1993. Mr. Day stated, at the informal conference, that this interruption was unfair. First, because of the amount of time that elapsed between the notice and interruption. Second, because he had made a partial payment and that, in his opinion, it had not been acknowledged with an additional notice showing the new balance due. While a second notice would have been a courtesy to further warn Mr. Day of the scheduled interruption, a second notice was not required by Florida Public Service Commission Rules.

Furthermore, the February 9, 1994 interruption was not a violation of rule 25-22.032(10), prohibiting discontinuance of service during the pendency of a complaint proceeding. Mr. Day's Consumer Affairs case was closed by letter dated December 22, 1993. Commission Rules provide that customers should appeal within thirty

(30) days. Mr. Day was made aware of the procedure to request an informal conference on January 6, 1994 by Consumer Affairs staff. Mr. Day had not requested an informal conference as of the February 9, 1994 interruption date.

III. DAMAGES

Mr. Day communicated, to both Southern Bell and ATT-C, that he believed he was entitled to \$600 as compensation for the anguish he suffered due to the service interruptions. Pursuant to Chapters 350 and 364, Florida Statutes, this Commission has exclusive jurisdiction over telecommunications common carriers with respect to their authority, rates and service. While we have authority, under proper circumstances, to require refunds or impose regulatory penalties, we have no jurisdiction to award damages. If Mr. Day believes that he is entitled to any monetary compensation, the appropriate remedy is for him to file an action in County or Circuit Court.

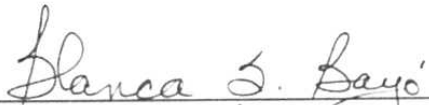
It is therefore,

ORDERED by the Florida Public Service Commission, that the complaint of Mr. Aristides Day against BellSouth Telecommunications, Inc. D/B/A Southern Bell Telephone and Telegraph Company is dismissed. It is further

ORDERED, that unless a person whose interests are substantially affected by the action proposed herein files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, this Order shall become final and this docket shall be closed on the following date.

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By ORDER of the Florida Public Service Commission, this 9th
day of June, 1994.



BLANCA S. BAYO, Director
Division of Records and Reporting

(S E A L)

MMB

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 June 30, 1994.

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.

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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 wastewater 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.