

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Raymond) DOCKET NO. 941261-TL
DiSalvo against BELLSOUTH) ORDER NO. PSC-95-0014-FOF-TL
TELECOMMUNICATIONS, INC. d/b/a) ISSUED: January 5, 1995
SOUTHERN BELL TELEPHONE AND)
TELEGRAPH COMPANY.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER DISMISSING 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 in accordance with Rule 25-22.029, Florida Administrative Code.

On August 25, 1994, Mr. Raymond DiSalvo lodged a complaint with the Commission's Division of Consumer Affairs against BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell). The complaint concerned the telephone number which had been assigned to Mr. DiSalvo and the customer's lack of satisfaction with Southern Bell's offer to correct the problem.

In a report dated September 7, 1994, Southern Bell advised Consumer Affairs that Mr. DiSalvo had called on August 8, 1994, to complain that he had been receiving calls intended for the previous customer that was assigned his number. The previous customer, New Horizons of the Treasure Coast, Inc., is a mental health center and the number had been used by New Horizons as a crisis and suicide hotline.

The phone number was disconnected on December 4, 1990, after being in service for New Horizons for twenty-one years. The number

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remained inactive for three years and was assigned to Mr. DiSalvo on December 2, 1993, three years later. Southern Bell's standard operating procedure for assigning numbers provides that any number can be re-assigned after one year.

Mr. DiSalvo made numerous calls to Southern Bell and to the Commission complaining that the assignment of this number had disrupted the operations of his three businesses. He complained that the continuous crisis calls being made to his number day and night significantly disrupted his life as well. He blamed Southern Bell for not informing him of the history of the number before it was issued.

On August 22, 1994, Southern Bell offered to change Mr. DiSalvo's number at no charge, place an intercept on the line for the proper reference of calls, and pay the cost of reprinting his business stationery. Mr. DiSalvo declined to accept the offer, hired an attorney, and threatened a lawsuit against Southern Bell. On August 26, 1994, Mr. DiSalvo's attorney sent Southern Bell a letter requesting \$1,000 for printing costs and \$5,000 for damages. A Southern Bell memorandum dated September 7, 1994, indicates that Mr. DiSalvo told them that he deserved \$20,000 to \$50,000 in damages.

Mr. DiSalvo has declined to pay his phone bill while attempting to resolve this matter. He called the Commission repeatedly throughout August, September and November with complaints. Mr. DiSalvo's number was changed on September 13, 1994. Pursuant to continuous pressure from Mr. DiSalvo, New Horizons agreed to take back its old number and refer Mr. DiSalvo's callers to his new number.

Consumer Affairs informed Mr. DiSalvo that it believed that Southern Bell's offer to change Mr. DiSalvo's number at no charge, place an intercept on the line for the proper reference of calls, and pay the cost of reprinting his business stationery was a reasonable resolution to Mr. DiSalvo's complaint. Mr. DiSalvo does not accept Southern Bell's proposed resolution. On November 18, 1994, Consumer Affairs received a written request from Mr. DiSalvo for an informal conference pursuant to 25-22.032, Florida Administrative Code.

The November 18, 1994, complaint alleges that Southern Bell knowingly and willingly disrupted Mr. DiSalvo's business operations by its assignment of the crisis line number and manner of handling the resulting problem. Mr. DiSalvo asserts that the problem caused the cessation of his businesses to the point of ruination. He requests that the Commission review his case and determine what

changes in the Rules may be necessary to prevent other such occurrences.

With respect to the failure to pay his bill, Mr. DiSalvo considers all of his telephone charges to be in dispute. He feels that Southern Bell owes him at least \$6,000 in damages. As of December 7, 1994, Mr. DiSalvo's outstanding balance was \$1123.32.

The Consumer Affairs division states that the November 18, 1994 complaint by Mr. DiSalvo stated no basis for relief under the Florida Statutes, Commission rules or orders, or the applicable tariffs. Accordingly, pursuant to Rule 25-22.032(4), Consumer Affairs declined to conduct an informal conference and has brought the matter to the Commission for resolution.

Mr. DiSalvo considers all of his telephone charges to be in dispute, and because he feels that Southern Bell owes him at least \$6,000 in damages, he has refused to pay his phone bill. As of December 7, 1994, Mr. DiSalvo's outstanding balance was \$1123.32.

On November 28, Southern Bell informed Mr. DiSalvo that, if he did not pay his phone bill, his number would be disconnected. The planned disconnection date was December 7, 1994. Southern Bell credited \$48.21 to Mr. DiSalvo for calls to its offices and offered Mr. DiSalvo payment arrangements for the balance of his bill. Mr. DiSalvo paid \$50.00 of his outstanding balance to Southern Bell on December 7, 1994. Southern Bell committed not to disconnect Mr. DiSalvo's phone pending the Commission's decision on his complaint.

On September 19, 1994, late in the afternoon on the day before the Agenda Conference in which his case was scheduled, Mr. DiSalvo faxed a letter to the Commissioners in which he reiterated his complaint. He also alleged that he had been told that the Staff's recommendation to deny him an informal conference was a foregone conclusion. He demanded 1) that the Staff be reviewed for their handling of his case; 2) that he had continuously sought review of the current policy regarding the reissuance of emergency phone numbers and only wanted an informal conference with Southern Bell; and 3) that the Commission should review Southern Bell's Standard Operating Procedures in this regard.

DISCUSSION

Upon review of the information before us, it appears that Mr. DiSalvo's complaint is essentially summarized as follows: 1) Southern Bell inappropriately assigned number (407) 283-7070 to Mr. DiSalvo; 2) Mr. DiSalvo suffered damages to his business due to

Southern Bell's assignment of number (407) 283-7070 and he should be compensated in some amount for such damages; 3) Mr. DiSalvo's entire phone bill is in dispute as a result of his troubles due to the assignment of number (407) 283-7070; and 4) Southern Bell's number assignment policy should be changed.

Upon consideration, we find that Mr. DiSalvo's complaint against Southern Bell should be dismissed. Southern Bell violated no statute, rule, order or tariff in assigning Mr. DiSalvo the telephone number (407) 283-7070. We note that this number was held inactive by Southern Bell for approximately three years prior to reassignment. We also note that Southern Bell's internal policy is to keep a number inactive for at least one year prior to reassignment. This policy does not appear unreasonable.

We are cognizant of the problems incident to Mr. DiSalvo's situation. However, this seems to be an isolated problem that does not warrant major change to Southern Bell's number assignment policy. We further note that Southern Bell changed Mr. DiSalvo's number on September 13, 1994, to help ameliorate the problems associated with the number. This was done approximately five weeks after Mr. DiSalvo's first complaint to Southern Bell.

Regarding Mr. DiSalvo's claims for damages due to the number he was assigned, the Commission does not have the authority to award claims for business damages arising from the provision of telephone service. We are not unsympathetic but we are unable to order compensation for damages.

With respect to Mr. DiSalvo's failure to pay his phone bill since September of 1994, Mr. DiSalvo has not argued or alleged that his bill is incorrect, it appears that he is simply refusing to pay based on his claim for damages. We note that this is not an appropriate basis to refuse to pay what appears to be an otherwise appropriate bill.

As a final note, Southern Bell states that it has credited Mr. DiSalvo's account for the cost of the calls he made seeking to resolve his complaint. Further, at the Agenda Conference at which we considered this matter Southern Bell reaffirmed its offer to impose no charge for changing Mr. DiSalvo's number and reprinting Mr. DiSalvo's business stationary.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Complaint of Mr. Raymond DiSalvo against BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and

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Telegraph Company is denied as set forth in the body of this Order.

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, below, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 5th day of January, 1995.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

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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.

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

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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, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 26, 1995.

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 substantially 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.