

ORDER NO. PSC-95-0651-PHO-TL
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Southern Bell changed Mr. DiSalvo's phone number on September 13, 1994, approximately five weeks after his first complaint to the company. However, Mr. DiSalvo alleges that the assignment of this number severely disrupted the operations of his three businesses and has resulted in financial losses. He declined to pay his phone bill while attempting to resolve this matter.

By Order No. PSC-95-0014-FOF-TL, Notice of Proposed Agency Action issued on January 5, 1995, the Commission proposed to dismiss Mr. DiSalvo's complaint because it did not appear that Southern Bell had violated any rule or Order of this Commission and because a major complaint was that Southern Bell owed Mr. DiSalvo damages, an issue over which this Commission does not have jurisdiction. Mr. DiSalvo protested this PAA Order on January 24, 1995 and requested a formal hearing.

Southern Bell offered a settlement to Mr. DiSalvo: In exchange for dropping the hearing and any further action against the company, Southern Bell offered to reprint Mr. DiSalvo's stationery - including letterhead and envelopes - for all three of Mr. DiSalvo's businesses. Mr. DiSalvo declined the settlement offer.

According to Southern Bell, Mr. DiSalvo's phone bill as of February 2, 1995 amounted to \$1780.14. Southern Bell wanted payment or to disconnect his service. Mr. DiSalvo alleged that his entire bill was in dispute and that Rule 25-22.032(10) disallowed Southern Bell from disconnecting his service.

Pursuant to Rule 25-22.032(10), Florida Administrative Code, staff informed Mr. DiSalvo that if he and Southern Bell could not come to an agreement as to the amount of the bill in dispute, a staff member designated by the Division of Consumer Affairs would make a reasonable estimate to establish an interim disputed amount until the complaint was resolved.

Southern Bell provided the Commission staff and Mr. DiSalvo with a copy of his unpaid bill on March 17, 1995. Staff requested that Mr. DiSalvo mark the disputed calls on his copy of the bill with a yellow marker and provide staff with a justification for each call that he disputes. Mr. DiSalvo declined, demanding that the whole bill is in dispute.

Because no justification was provided to staff to dispute any part of the bill, on April 6, 1995, a staff member designated by the Division of Consumer Affairs made the determination that Mr. DiSalvo owed Southern Bell the full amount of his unpaid bill, \$1,780.14. We noted that Southern Bell had previously deducted a credit in the amount of \$54.45 for calls to this Commission. Mr.

DiSalvo was given until April 21, 1995 to pay his bill to Southern Bell or work out a satisfactory payment arrangement.

Mr. DiSalvo arranged a payment plan with Southern Bell and paid part of his bill but now states that he wants his money back because "his entire bill is in dispute."

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.
- 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 (and Staff) 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>		
Raymond DiSalvo	Self	All Issues
Renee Cooper	DiSalvo	All Issues
Robin Madden	Southern Bell	All Issues
John Romano	Southern Bell	All Issues
Linda Wakefield	Southern Bell	All Issues

V. BASIC POSITIONS

SOUTHERN BELL: Southern Bell has an appropriate internal policy regarding the reassignment of telephone numbers that balances customer concerns with the need to conserve numbers. In Mr. DiSalvo's case, Southern Bell complied fully with both its internal guidelines and with this Commission's rules. There was no impropriety in the way that Southern Bell handled Mr. DiSalvo's complaint.

DISALVO: It is my position that BellSouth Telecommunications has violated Florida Statute 364.10 by showing unreasonable prejudice or disadvantage by issuing a known emergency phone number to Petitioner. Further, after becoming aware of the complaint BellSouth continued to act in a prejudicial manor by denying culpability and taking unreasonable actions that further hurt Petitioner and the operation of his businesses.

STAFF: None.

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

ISSUE 1: Did Southern Bell violate any Rule in the handling of Petitioner's service and his related complaints?

SOUTHERN BELL'S POSITION: No. The only directly applicable rule is 25-4.116, F.A.C., entitled, "Telephone Number Assignment Procedure", which requires that each company maintain written standard operating procedures and apply these procedures in a non-discriminatory manner. Southern Bell complies fully with this rule by maintaining written procedures and applying them consistently.

DISALVO'S POSITION: Yes. It is my position that BellSouth Telecommunications has violated Florida Statute 364.10 by showing unreasonable prejudice or disadvantage by issuing a known emergency phone number to Petitioner. Further, after becoming aware of the complaint BellSouth continued to act in a prejudicial manor by

denying culpability and taking unreasonable actions that further hurt Petitioner and the operation of his businesses.

STAFF'S POSITION: None.

ISSUE 2: Was there any other impropriety in the way that Southern Bell handled Petitioner's service and his related complaints?

SOUTHERN BELL'S POSITION: No. The number assigned to Mr. DiSalvo had been unused for three years, which is substantially more than the minimum time required under the Company's policy. Also, Southern Bell's offer to resolve Mr. DiSalvo's complaint was reasonable.

DISALVO'S POSITION: Yes. Southern Bell improperly handled the complaint by ignoring my request, by not acting promptly, by not issuing proper orders to alleviate the situation, and by refusing to accept that they had any liability or involvement in the situation at all.

STAFF'S POSITION: None.

ISSUE 3: Is Southern Bell's internal policy regarding the reassignment of telephone numbers appropriate?

SOUTHERN BELL'S POSITION: Yes. Southern Bell's policy is appropriate because it properly balances customer's concerns with the need to conserve numbers by making them available for reassignment after a reasonable time.

DISALVO'S POSITION: No. Southern Bell's policy is inappropriate because it does not take special care in handling known emergency phone numbers and numbers that relate to life and death issues.

STAFF'S POSITION: None.

ISSUE 4: Should the Commission open a generic investigation regarding number reassignment procedures?

SOUTHERN BELL'S POSITION: No. Southern Bell's policies and procedures are satisfactory to the vast majority of our customers. There is no basis for this Commission to conclude that Mr. DiSalvo's complaint reflects a more general problem or that there is a need for a generic investigation.

DISALVO'S POSITION: Yes. The Commission should open a generic investigation because this would not be a major overhaul for the phone company. It would only require that a few lines in policy be changed. Southern Bell's current policy does not treat known emergency phone numbers any different than residential numbers when it comes to reassignment procedures.

STAFF'S POSITION: None.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
DiSalvo	Self	_____	BellSouth letter dated August 29, 1994
		_____	BellSouth memorandum dated September 7, 1994
		_____	Stuart news article dated August 24, 1994
		_____	Letter to Duanne Ackerman dated August 26, 1994
		_____	Letter to Duanne Ackerman dated September 13, 1994
		_____	PSC Memorandum dated December 8, 1994 (Staff recommendation)
		_____	PAA Order dismissing the complaint (DATE?)
		_____	PSC Memorandum to Richard Durbin

dated August 25,
1994

Letter to Sid Poe
from Raymond
DiSalvo, dated
August 8, 1994

Memorandum from
New Horizons,
dated May 23,
1994

Letter from New
Horizons, dated
August 10, 1994

Memorandum from
the chief
operating
officer of New
Horizons

Directive from
HRS to all
departments
from Kathy Fox

Envelope
addressed to
New Horizons,
attention: Ray
DiSalvo

Fax letter from
Ray DiSalvo to
Linda Wakefield
of Southern
Bell, dated
August 8, 1994

Fax letter to
Brendon
Dunleavy of
Southern Bell
from Ray
DiSalvo, dated
August 12, 1994

- _____ Copies of
printing bills
from Progress
Printing
- _____ Ad used in
Raymond
DiSalvo's
business
- _____ A Notice that
Ray DiSalvo
sent out to
clients
- _____ 4 Letters from
Barbara
Steedman of
Southern Bell
- _____ Letter from the
PSC to Ray
DiSalvo, dated
November 17,
1994
- _____ Letter to the
PSC from Ray
DiSalvo, dated
December 19,
1994
- _____ Letter to the
PSC from Ray
DiSalvo, dated
March 14, 1995
- _____ Letter to the
PSC from Ray
DiSalvo, dated
April 25, 1995
- _____ Letter from the
PSC (Suarez) to
Ray DiSalvo,
dated March 2,
1995

_____	Article from the New York Times news service
_____	Letter from PSC to Ray DiSalvo, dated April 11, 1995
_____	List of phone calls complied by Ray DiSalvo "while the number was an emergency hot- line number"

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
DiSalvo	Self	_____	Cassette tape of Emergency phone call.
		_____	Video taping of Emergency phone call.

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

VIII. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

IX. PENDING MOTIONS

None.

X. RULINGS

A. Raymond DiSalvo disputed facts in the Case Background of this Order. At this time, no changes will be made in the Case Background of this Order. Evidence to dispute the facts presented may be submitted during the Hearing.

B. Both parties requested to add witnesses to each respective witness list during the Prehearing Conference.

1) Southern Bell's Motion to Amend Prehearing Statement, Document No. 04411, was granted, allowing Southern Bell to add representatives from New Horizons to its witness list.

2) Southern Bell must file deposition testimony of its additional witnesses, John Romano and Linda Wakefield, by May 16, 1995.

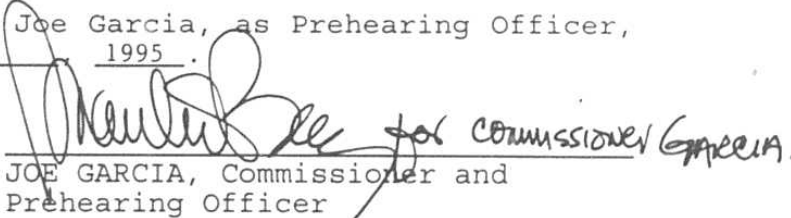
3) Raymond DiSalvo's request to add a witness, Renee Cooper, to his witness list was also granted.

4) Raymond DiSalvo must pre-file testimony for his additional witness by May 16, 1995.

It is therefore,

ORDERED by Commissioner Joe Garcia, 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 Joe Garcia, as Prehearing Officer, this 26th day of May, 1995.


JOE GARCIA, 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; 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.