

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Raymond) DOCKET NO. 941261-TL
DiSalvo against BellSouth) ORDER NO. PSC-95-1153-FOF-TL
Telecommunications, Inc. d/b/a) ISSUED: September 18, 1995
Southern Bell Telephone and)
Telegraph Company.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON

ORDER DENYING COMPLAINT AND CLOSING DOCKET

Pursuant to Notice, a hearing was held in this docket on June 1, 1995.

APPEARANCES:

J. Phillip Carver, General Attorney, Robert G. Beatty, General Counsel - FL, c/o Nancy H. Sims, 150 South Monroe Street, Room 400, Tallahassee, Florida 32301.
On behalf of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company.

Raymond DiSalvo, 2430 SW Foxpoint Trail, Palm City, Florida 34990.
On behalf of Raymond DiSalvo.

Tracy Hatch, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0863
On behalf of the Commission Staff.

Prentice Pruitt, Esquire, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0862
On behalf of the Commissioners.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

BY THE COMMISSION:

I. BACKGROUND:

On August 25, 1994, Mr. Raymond DiSalvo (Petitioner) of Palm City, Florida, filed 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). Mr. DiSalvo had been assigned a phone number, (407) 283-7070, by Southern Bell for residential service at his home on December 2, 1993. After being assigned this phone number, Mr. DiSalvo alleged that he began receiving calls intended for the previous customer assigned this number, New Horizons of the Treasure Coast, Inc. (New Horizons). New Horizons is a counseling and referral center. The number had been used by New Horizons of the Treasure Coast, Inc. and its predecessor for a period of approximately 18 years, ending in December of 1990.

Prior to the initiation of his complaint to the Public Service Commission, Southern Bell had offered to: 1) change Mr. DiSalvo's number at no charge; 2) place a recorded message on the old number, so that callers would be advised of the new numbers for New Horizons and Mr. DiSalvo; and 3) reimburse Mr. DiSalvo for the documented cost for reprinting his stationary. Mr. DiSalvo declined the settlement offer.

Southern Bell changed Mr. DiSalvo's phone number on September 13, 1994. However, Mr. DiSalvo alleged that the assignment of (407) 283-7070 and subsequent number change severely disrupted the operations of his three businesses and has resulted in financial losses. Mr. DiSalvo's use of a residential line (R1) to operate his businesses was not raised as an issue in this proceeding.

By Order No. PSC-95-0014-FOF-TL, Notice of Proposed Agency Action - Order Denying Complaint, issued on January 5, 1995, the Commission proposed to deny Mr. DiSalvo's complaint because it did not appear that Southern Bell had violated any rule or Order of this Commission in the handling of Petitioner's service and his related complaints. Mr. DiSalvo protested this Order on January 24, 1995 and requested a formal hearing.

The hearing was held on June 1, 1995. Mr. DiSalvo testified on his own behalf and offered twelve exhibits, all of which were admitted into evidence. Mr. DiSalvo represented himself at the hearing. The panel deposition of John Romano and Linda Wakefield, employees of New Horizons, was also admitted into evidence. Robin Madden testified on behalf of Southern Bell.

II DISCUSSION:

The uncontroverted evidence introduced at hearing is that Southern Bell, in accord with Rule 25-4.116, F.A.C., maintains written procedures for telephone number reassignment. Witness Madden, testifying on behalf of Southern Bell described the procedure:

The administration of the process for reassignment of telephone numbers is set out specifically in the BellSouth Practices, and is carried out by the Network Line and Number (LNA) organization. BellSouth Practice 194-100-013BT is the controlling practice for "aging" of telephone numbers, i.e., the length of time that a number is held. The parameters of the Practice generally incorporate Southern Bell's policy for telephone number reassignment. The Practice provides for the following: residence numbers must be aged for a minimum of three months from the date of disconnection or change. Business numbers must be aged for a minimum of twelve months after the disconnect date or while listed in the current directory, whichever is longer (TR p. 96).

The previous customer, New Horizons, terminated service through this number on December 4, 1990. Service was established for Mr. DiSalvo on December 2, 1993. Clearly, this interval of two days short of three years is greater than twelve months and greater than the time the number would have been listed in the current directory. Thus, Southern Bell complied with its written guidelines and Rule 25-4.116, Florida Administrative Code, in the instant case.

Mr. DiSalvo argues that Southern Bell has violated Section 364.10, Florida Statutes. That section provides:

A telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The statute requires that all subscribers who are similarly situated be afforded the same treatment. To do otherwise would constitute an "undue or unreasonable prejudice." The statute generally requires similar treatment in similar circumstances. A proper reading of the statute in this factual setting, imposes a requirement that all subscribers be treated the same with respect to the application of Rule 25-4.116, Florida Administrative Code.

Rule 25-4.116 requires a standard procedure to ensure that this similar treatment occurs in the specific context of number reassignment. As discussed above, Southern Bell complied with Rule 25-4.116 in this case. By complying with the rule, Southern Bell has complied with the statute. There was no evidence presented at the hearing to support the contrary view that Southern Bell violated the statute.

Therefore, we find that Southern Bell did not violate any applicable rule or statute in the handling of Petitioner's service and his related complaints.

As detailed above, the greater weight of the evidence shows that Southern Bell's policy with respect to telephone number reassignment is reasonable and was appropriately applied in this case. The uncontroverted evidence is that this number was not in service for almost three years before being assigned to Mr. DiSalvo. It appears from the record that the first call intended for New Horizons received by Mr. DiSalvo was in January of 1994. It appears from the record that sometime after that Mr. DiSalvo contacted Mr. Sid Poe, a Southern Bell employee who is listed in various exhibits as a Public Relations Manager, or Treasure Coast Manager, Corporate/External Affairs.

The substance of the conversation(s) between Mr. Poe and Mr. DiSalvo is not detailed in the record, except that on August 8, 1994, Mr. DiSalvo wrote a letter to Mr. Poe thanking him for his efforts to obtain a new phone number. Mr. DiSalvo states in that letter "Upon review, I find they (sic) phone company to be culpable if not totally responsible for the situation that I now find myself unwillingly engaged." This letter is, chronologically, the first evidence of a complaint by Mr. DiSalvo to Southern Bell suggesting some action by the phone company was needed. It appears that previously, Mr. DiSalvo had been seeking redress from New Horizons of the Treasure Coast, Inc.

On August 8, 1994, Mr. Poe asked that a representative from Southern Bell's business office contact Mr. DiSalvo. Brendan Dunlevy of Southern Bell contacted Mr. DiSalvo. He offered to: 1) change Mr. DiSalvo's number at no charge; 2) place a recorded message on the old number, so that callers would be advised of the new numbers for New Horizons and Mr. DiSalvo; and 3) reimburse Mr. DiSalvo for the documented cost for reprinting his stationary. Mr. DiSalvo indicated that he would call back later with his decision.

Over the next two weeks, a series of phone calls and correspondence were exchanged. These discussions did not resolve the matter. Eventually, Mr. DiSalvo demanded a new phone number,

twenty to fifty thousand dollars for damages to his businesses, Southern Bell's assistance in funding his not-for-profit corporation (Elder Tot Centers International, Inc.), that a live operator intercept calls to the old number, and that the old number be permanently retired.

Mr. DiSalvo followed with a letter from his attorney, M. Timothy Hanlon, dated August 26, 1994, to the president of Southern Bell demanding that a new phone number be immediately assigned to Mr. DiSalvo, installing a procedure whereby Mr. DiSalvo's callers are properly referred to the new phone number and six thousand dollars to settle all claims. Counsel for Southern Bell responded with the same offer made previously. The record does not indicate that Mr. DiSalvo ever formally rejected Southern Bell's offer.

On or about September 12, 1994, Mr. DiSalvo again called Southern Bell and the Public Service Commission demanding that his number be changed, and changed on that day. The change was made on September 13, 1994.

From the evidence introduced at hearing, it is clear that Mr. DiSalvo demanded on September 12, 1994, that his number be changed. This was the same offer that Southern Bell had made on numerous occasions, over a period of more than a month.

In his brief, Mr. DiSalvo argues that this situation put him under "tremendous philological (sic) pressure" and that Southern Bell was accountable for "metal (sic) anguish and suffering; loss of profits from possible earnings, and injury to business". (Brief of Petitioner at pages 3 and 12). He seeks an award for "actual damages in the amount of \$54,000, and whatever other actions the Commission feels just and proper." (Brief of Petitioner at page 13).

The Commission lacks the authority to award damages. As stated by the Florida Supreme Court: "Nowhere in Ch. 364 is the PSC granted authority to enter an award of money damages (if indicated) for past failures to provide telephone service meeting the statutory standards; this is a judicial function within the jurisdiction of the circuit court pursuant to Art. V, section 5(b), Fla. Const." Southern Bell v. Mobile America Corp., 291 So.2d 199 at 202 (Fla. 1974).

Based on the record of this proceeding, it appears that Southern Bell did not ignore Mr. DiSalvo's complaint, did act promptly to respond to the complaint, and promptly offered a reasonable solution to address the complaint. Therefore, we find

that there was no other impropriety in the way that Southern Bell handled Petitioner's service and his related complaints.

The record is devoid of any evidence to support the proposition that this is anything other than an isolated incident. This number was, first and foremost a general business number for a counseling and referral agency. It was not a suicide hotline number as alleged by Mr. DiSalvo. New Horizons never indicated to Southern Bell that this was an emergency number. While it was printed on the inside cover of the Martin County directory for a number of years, this was not a "known emergency number". It is not reasonable to anticipate that more than three years after it was removed from service, calls for the previous customer would be made to that number. The uncontroverted evidence suggests that if Southern Bell is aware that a number is a frequently called or well known number, procedures are in place to keep the number out of service after disconnection for longer than the periods mandated by BellSouth Practice 194-100-013BT.

Therefore, we find that Southern Bell's internal policy regarding the reassignment of telephone numbers is appropriate.

The record is devoid of any evidence suggesting that the situation experienced by Mr. DiSalvo is anything other than an isolated incident. Contrary to Mr. DiSalvo's assertion, the evidence does suggest that if, the company is aware that a telephone number is a "frequently called or well known", it takes appropriate care in the reassignment of the number. Assuming arguendo, that this was a frequently called or well known number, it is not reasonable to anticipate that more than three years after it was removed from service, calls for the previous customer would be made to that number.

Because the evidence shows that the company did not violate any applicable policy, rule or statute in the handling of Mr. DiSalvo's complaint, because the evidence shows there was no other impropriety in the way that Southern Bell handled Petitioner's service and his related complaints, and because the evidence shows Southern Bell's internal policy regarding the reassignment of telephone numbers is appropriate, no generic investigation is warranted.

Therefore, we find that a generic investigation regarding number reassignment procedures is not warranted.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Southern Bell did not violate any applicable rule or statute in the handling of Petitioner's service and his related complaints. It is further

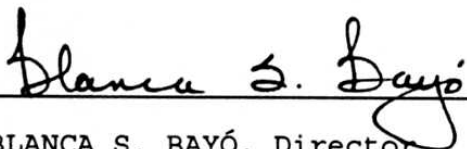
ORDERED by the Florida Public Service Commission that there was no other impropriety in the way that Southern Bell handled Petitioner's service and his related complaints. It is further

ORDERED by the Florida Public Service Commission that Southern Bell's internal policy regarding the reassignment of telephone numbers is appropriate. It is further

ORDERED by the Florida Public Service Commission that a generic investigation regarding number reassignment procedures is not warranted. It is further

ORDERED by the Florida Public Service Commission that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 18th day of September, 1995.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 and/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 after the issuance 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.