

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Alexander) DOCKET NO. 950235-TL
Tomas against BellSouth) ORDER NO. PSC-96-0866-FOF-TL
Telecommunications, Inc. d/b/a) ISSUED: July 2, 1996
Southern Bell Telephone and)
Telegraph Company regarding)
charges for rotary service.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON

Pursuant to notice, a public hearing was held in this docket on March 6, 1996, in Tallahassee, Florida.

APPEARANCES:

J. Phillip Carver, BellSouth Telecommunications, Inc.,
150 West Flagler Street, Suite 1910, Miami, Florida 33130
On behalf of BellSouth Telecommunications, Inc.

Richard D. Melson, Hopping Green Sams and Smith, Post
Office Box 6526, Tallahassee, Florida 31314
On behalf of the Petitioners.

Michael Billmeier, Florida Public Service Commission,
2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-
0863
On behalf of the Commission Staff.

FINAL ORDER RESOLVING COMPLAINT

BY THE COMMISSION:

I. Background

On October 25, 1994, our Division of Consumer Affairs received a letter from Alexander Tomas, President of Alexander Tomas & Associates, requesting a refund in the amount of \$1,733,728 for rotary service charges which had been billed to his clients, Pizza

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FPSC-RECORDS/REPORTING

Hut of America and Walgreens, by BellSouth Telecommunications, Inc. (BellSouth). Our staff informed Mr. Tomas on November 8, 1994 that BellSouth was correctly billing his clients in accordance with its tariff. Mr. Tomas disputed the findings and requested an informal conference to discuss his complaint. An informal conference was held on February 20, 1995 in Tallahassee with staff, representatives of BellSouth, and Mr. Tomas. No settlement was reached at the conference. Mr. Tomas reiterated his position in a post-conference filing on February 21, 1995 and revised the refund amount to \$1,863,728 which added Coldwell Banker and "miscellaneous accounts" to his client list.

By Notice of Proposed Agency Action Order No. PSC-95-0515-FOF-TL, issued April 26, 1995, we dismissed the complaint. Mr. Tomas' clients (Petitioners¹) filed a timely protest and request for hearing.

Prior to the hearing, Petitioners and BellSouth filed a joint motion to bifurcate the proceeding. The parties proposed under Phase 1 consideration of whether or not BellSouth properly applied its tariff, whether refunds would be appropriate, and how such refunds should be calculated. Phase 2, if necessary, would deal with factual claims of individual petitioners and amounts of such refunds. Order No. PSC-95-1577-PCO-TL, issued December 21, 1995, approved the joint motion.

A prehearing conference was held February 16, 1996 and a hearing was held on March 6, 1996 in Tallahassee. At the hearing, Alexander Tomas testified on behalf of the Petitioners and George William Freeman testified on behalf of BellSouth.

II. Rotary Service

Rotary service allows completion of an incoming call to any line in the rotary group if the called line is busy. The dispute in the hearing was over whether, under its tariff, BellSouth must provide terminal rotary or circular rotary. Under terminal rotary, the search for an idle line starts with the first called line and ends with the last line in the group. Under circular rotary, the search begins with the called line and searches each line in the

¹ Pizza Hut of America, Inc., Walgreen Co., Coldwell Banker Residential Real Estate, Inc., Calvary Chapel of Ft. Lauderdale, Calvary Chapel of Sunrise, First Lutheran Church, Kent Security, Florida Radio Rental, Greenwich Condominium Association, Tri-County Concrete Products, Valley Forge Fabrics, Ocean Ranch Hotel, and Christ Lutheran Church.

group. The search ends on the line immediately preceding the called line. To explain the difference, consider a phone system with three lines, lines 1, 2, and 3. Under terminal rotary, a call to busy line 1 will rotate to line 2. If line 2 is busy, the call will rotate to line 3. If line 2 is called and is busy, the call will rotate to line 3. If line 3 is busy, the search ends. Circular rotary works the same way if the initial call is made to line 1. However, under circular rotary, if line 2 is called and is busy, the call will rotate to line 3. If line 3 is busy, the call will rotate to line 1.

The record shows that BellSouth provides terminal rotary service unless circular rotary is requested and charges the same rate for either service. Before 1986, BellSouth only offered terminal rotary under the tariff. Circular rotary became available as a special assembly around 1986. BellSouth folded circular rotary into its tariff in 1991. BellSouth charges for each line in a rotary group.

III. Petitioners' Argument

The Petitioners argue that the tariff describes circular rotary. The relevant portion of the tariff reads as follows:

Rotary or hunting service is an arrangement via central office equipment which allows completion of an incoming call to any of the lines (i.e. individual lines, PBX trunks, or NARS) in a group from a line (in the group) that is called but is in use. A rotary charge as specified below applies to each of the lines in the group that are equipped for rotary service. EXH 2 at 2.

The Petitioners state the tariff describes circular rotary and that terminal rotary does not meet the definition. The Petitioners argue that the second sentence quoted above provides that a rotary charge can only be assessed on a line "equipped" for rotary service. The Petitioners believe that the last line in a terminal rotary group is not "equipped" for rotary service. The last line in a rotary group, according to the Petitioners, cannot be "equipped" for rotary service because it does not forward calls to other lines. Accordingly, because BellSouth is charging for the last line in the group and that line is not "equipped" for rotary service, Petitioners believe BellSouth is not charging in accordance with its tariff.

The Petitioners further argue that BellSouth's interpretation requires a non-grammatical reading of the tariff. They state that the phrase, "to each of the lines in the group that are equipped

for rotary service" requires that a charge be applied only to the lines that will rotate calls to other lines. The Petitioners believe that the use of the plural form of the verb shows the charge must be applied to each line equipped for rotary service rather than to each line in a rotary group. BellSouth's practice of charging for each line in the rotary group therefore violates the tariff provisions.

The Petitioners also argue that the tariff does not provide multiple options for rotary service. By comparison, the Petitioners cite BellSouth's tariff for ESSX service to show an example of when BellSouth separates out charges for different types of rotary service. The Petitioners also point out that a customer purchasing rotary service under the tariff will not know from his or her bill which type of rotary service he or she receives.

The Petitioners disagreed with BellSouth that residual pricing supports its interpretation of the tariff. BellSouth witness Freeman stated that if BellSouth did not charge for the last line in a rotary group, it would have simply charged more for the other lines to make up the difference. The Petitioners argue that if BellSouth improperly counted the number of rotary lines, it is BellSouth's responsibility; that is, BellSouth should have calculated the proper per-line charge according to its tariff. The Petitioners further argue that BellSouth significantly undercounted the number of rotary units sold and revenues received.

IV. BellSouth's Argument

BellSouth stated that it charges for each line in a rotary group because each line is necessary for the group to function properly. As witness Freeman stated, "All lines in a hunt group are a part of a rotary arrangement's functionality and are conditioned in the network as such when Rotary Service is established.". Section A3.6.1.A of BellSouth's tariff states,

Specifically, the rotary charges in A3.6.2 will apply to Flat Rate individual lines (residence and business); Residence Message Rate individual lines; auxiliary lines; Flat Rate Incoming or Combination PBX Trunks and Flat Rate Incoming or Combination NARS in a hunting arrangement. EXH 2 at 2.

BellSouth argues that this language allows it to charge for each line in a rotary group.

BellSouth provides its customers with a choice of terminal rotary or circular rotary. Customers are charged the same rate for

either option. According to BellSouth, customers have discussions with customer service representatives and determine through those discussions which type of service best meets their needs. Customers are provided with terminal hunting unless it is determined they need circular hunting.

BellSouth noted that charges for terminal and circular rotary are different under the ESSX tariff. However, witness Freeman explained that the rates are different because it is necessary to recover additional costs of provisioning circular hunting on an ESSX line. According to witness Freeman, when the cost of providing circular rotary and terminal rotary differed, circular was provided on a special assembly basis and when the costs became equal, circular was folded into the tariff.

V. Analysis and Conclusion

Petitioners do not believe the charge is being correctly applied because the service, as described in BellSouth's tariff, is not available to the last line in each rotary group. BellSouth's witness Freeman believes the company is charging properly under its tariff, since all lines in a hunt group are a part of a rotary arrangement's functionality and are conditioned in the network as such when rotary service is established.

We find the tariff language shows BellSouth is properly charging for rotary service. The Petitioners focus on the portion of the tariff that says a charge applies, "to each of the lines in the group that are equipped for rotary service." We believe that line can be read to allow a charge for each line in a rotary group. Whatever confusion is generated by that line is cleared up, we believe, in a later sentence, "Specifically, the rotary charges...will apply to Flat Rate individual lines (residence and business)...in a hunting arrangement." We believe this allows BellSouth to charge for all lines involved in a rotary group and not just the lines that rotate calls.

Further, we find the historical development of the tariff shows that BellSouth has consistently charged for each line in a group and is properly charging rotary service. Exhibit 2 is the approved tariff pages for Rotary Service for the period beginning January 1, 1984 through the hearing date, March 6, 1996. Arrangements for Rotary Service (on January 1, 1984) are provided under Section A.3.4.2B.3:

All lines in a group of two way flat rate or business auxiliary (inward) exchange access lines arranged for rotary, hunting or similar service which allows

completion of an incoming call to any of the lines in the group from a line that is called but is in use, by means of central office equipment, **will have an additional rate equal to 50% of the rate for a residence or business individual flat rate exchange access line on each of the lines in the group.** (Emphasis added) EXH 2 p. 14.

We believe the tariff sets forth that all lines in a rotary group are assessed a rotary charge. Identical tariff provisions continued in effect until October 1, 1991. The aforementioned tariff provision was deleted in Section A3.4.2B.3. effective October 1, 1991 and replaced with Section A3.6.1A.

Section A3.6.2A. delineates the rotary charge (rate), by rate group, for residence and business lines. Section A3.6.1A was changed to read in part:

Rotary service is an arrangement via central office equipment which allows completion of an incoming call **to any of the lines in a group** from a line (in the group) that is called but is in use. A **rotary rate differential** as specified below **applies to each of the lines in the group...** (Emphasis added) EXH 2 p. 4.

We do not believe the October 1, 1991 tariff filing changed the application of the rotary charge; it merely provided for specific rotary rates, rather than as a percentage of the individual line rate.

The February 17, 1994 tariff filing did not change the application of the rotary charge but reflects reductions in the business per line, PBX Trunk or NAR rotary charges. See Order No. PSC-94-0172-FOF-TL.

Although BellSouth offers two services under the same language in the tariff, we cannot see how customers are harmed. Customers have the opportunity to learn of both versions when dealing with BellSouth representatives and the option to choose either service. BellSouth's costs and rates are the same for either rotary service. In the ESSX tariff, BellSouth charges different rates for the different services because the costs are different. Here, the costs are the same, so the price is the same.

At the hearing, the Petitioners argued that BellSouth should have converted all rotary service subscribers to circular rotary when the service became technically available. The Petitioners conceded in their brief that this position was impractical. Such a requirement would force local exchange companies (LECs) to

analyze each business customer's existing services to determine if the new technology could be beneficial to the customer and, if so, convert the customer to the new technology. We do not believe BellSouth should have such an obligation. LECs are required to advise potential residential and single-line business customers of the lowest basic local exchange rates at the time of first contact. However, because of the numerous offerings available to multi-line business customers and the sophistication of those customers, we have left the selection of multi-line telephone services to the individual businesses. Business customers are capable of determining which type of rotary suits their needs and the choice should be theirs, not BellSouth's.

Based on the language of the tariff, the historical development of the tariff, and our conclusion that, in this instance, customers are not harmed by having the tariff reflect two different services, we find that BellSouth is properly applying its tariff.

VI. Refunds

The Petitioners argue that if the Commission finds the last line in a hunt group is not equipped for rotary service, then every customer who has been provided terminal rotary service by default has been overcharged. BellSouth should provide refunds back to October 1, 1991, the date it began offering circular rotary under its tariff. While witness Tomas testified at the hearing that BellSouth should have changed a customer's service from terminal to circular when circular became available, the Petitioners, in their brief, stated that the record may support limiting refunds to the time after circular rotary was folded into the tariff. The refunds should include refunds of any taxes paid and interest pursuant to statute. In their brief, the Petitioners limited the refund request somewhat. First, they said no refund is appropriate if BellSouth can prove a customer was given a choice between circular rotary and terminal rotary and chose terminal. Second, they said no refund is appropriate if the last line in a hunt group is a non-dialable number.

The Petitioners, in their Brief and in Mr. Tomas' rebuttal testimony, argue that the Commission should consider a partial refund for lines besides the last line in a terminal group. The Petitioners did not explain further how such a refund should be calculated. In his deposition, witness Tomas explained that, in a four-line hunt group, a 1/4 refund would be appropriate for line 2, a 1/2 refund for line 3, and a full refund for line 4.

BellSouth contends that no refund is appropriate because it has correctly applied its tariff. If the Commission finds BellSouth did not provide rotary service in accordance with its tariff, BellSouth still believes no refund is appropriate. BellSouth believes, and the Petitioners agree, that no refund is appropriate if the customer made an informed decision to choose terminal rotary over circular rotary. BellSouth believes customers must offer evidence that they were misled into believing they were purchasing a service different from what they received. BellSouth further argues that there is no advantage to receiving circular rotary over terminal rotary. Therefore, a customer who received terminal rotary has not been damaged and is not entitled to a refund. In fact, says BellSouth, if there had been a demand for circular rotary, they would have tariffed it separately and charged separately for it.

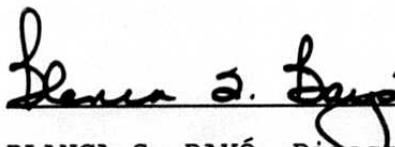
We find that BellSouth correctly applied its tariff so no refunds are appropriate. Since we find that no refunds are appropriate, we need not analyze the remaining arguments on how a refund should be calculated.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc. is properly applying its rotary service tariff. It is further

ORDERED that, because BellSouth Telecommunications, Inc. is properly applying its rotary service tariff, no refunds are due to the Petitioners based on improper application of the tariff.

By ORDER of the Florida Public Service Commission, this 2nd day of July, 1996.



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.