

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition to investigate, claim for damages, complaint, and other statements against respondents Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Corporation, by Bessie Russ.

DOCKET NO. 060640-TP
ORDER NO. PSC-07-0207-PCO-TP
ISSUED: March 6, 2007

ORDER DENYING INTERVENTION, ESTABLISHING NEW DOCKET,
AND CONSOLIDATING DOCKETS

On September 22, 2006, Ms. Bessie Russ filed a petition and complaint (Petition/Complaint) seeking relief from, and remedies for, certain alleged practices of Evercom Systems, Inc. (d/b/a Correctional Billing Services) (CBS) and BellSouth Telecommunications, Inc. (BellSouth), jointly and severally.¹ Petitioner claims she is unable to receive telephone calls from a relative incarcerated in an Escambia County jail. A Petition to Intervene was filed by Mr. Michael Russ on December 11, 2006.

Subsequently, on January 3, 2007, BellSouth filed a Response and Answer to Michael Russ' Petition for Sanctions. In its Response, BellSouth addresses the merits of the petition filed by Bessie Russ and reiterated by Mr. Russ and does not appear to directly address Mr. Russ' intervention request.

Mr. Russ petitioned to intervene in this docket because he resides in the same household as Bessie Russ, and he has experienced the same interference and difficulty working with CBS and BellSouth. He believes that he has suffered the same quality of damages as Bessie Russ. He states CBS informed him that BellSouth has placed a block on his phone that prevents him from doing business with CBS. Mr. Russ chose to "purposefully omit" his phone number from his Petition to Intervene; however, through an affidavit submitted on January 12, 2007, our staff was able to determine that Mr. Russ and his mother, Ms. Russ, have separate account numbers with BellSouth. He contends that he should be allowed to intervene because he is the son of the Petitioner.

Pursuant to Rule 25-22.039, Florida Administrative Code, persons seeking to intervene in a Commission proceeding must demonstrate that they are entitled to participate and must include allegations sufficient to show that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. A two-prong test for standing was established in Agrico Chemical Co. v. Dept. of Environmental

¹ Bessie Russ' initial pleading is entitled "Petition To Investigate, Claim for Damages, Complaint and Other Statements Against Respondents Correctional Billing of America and BellSouth Corporation; Jointly and Severally."

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Regulation, 406 So.2d 478, 482 (Fla. 2nd DCA 1981), rev. denied 415 So.2d 1359 (Fla. 1982). See, Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997).

Under Agrico, a party must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Both prongs must be satisfied to establish standing.

With respect to the first prong, Mr. Russ does not address whether or not he will suffer injury in fact of sufficient immediacy for his concerns regarding his mother's account. Rather, he contends that there are no bars to intervention as both parties appear to be in litigation. Mr. Russ' petition contains a number of allegations concerning his dealings with BellSouth and CBS. Mr. Russ asserts that when attempting to set up service with CBS, he was informed by CBS that BellSouth blocked use of the service for his telephone number. Mr. Russ has stated identical arguments to Ms. Russ' Petition.

Mr. Russ has not demonstrated that he has met the first prong of the Agrico test to establish standing in this proceeding regarding Ms. Russ' complaint. Having reviewed his Petition, it appears that Mr. Russ will not be affected by this proceeding because he has a separate account with BellSouth and was establishing a separate account with CBS. As Mr. Russ is the sole holder of an account separate from Bessie Russ, he has the ability to separately petition this Commission regarding his concerns.

Because the first prong of the Agrico test has not been met and both prongs must be met, it is unnecessary to address the second prong of the Agrico test in this matter, and Mr. Russ' Petition to Intervene in Docket No. 060640-TP is denied.

However, Florida courts have held that "courts should look to the substance of a motion and not the title alone." Mendoza v. Board of County Commissioners/Dade County, 221 So. 2d 797, 798 (3rd DCA 1969). See also Sodikoff v. Allen Parker Company, 202 So.2d 4 (Fla.App.1967); Hough v. Menses, 95, 95 So.2d 581, 582 (Fla. 1957). I find it reasonable and appropriate to afford more latitude to consumers regarding procedures before the Commission. Thus, I look to the substance of Mr. Russ' Petition to Intervene and find it sufficient to establish a separate docket regarding his allegations against BellSouth and CBS with respect to his individual account.

Additionally, because these dockets both stem from the attempt to be able to receive telephone calls from the Escambia County Jail and thus involve similar issues of law and fact as well as similar parties, I find it appropriate that these dockets be consolidated. No party would be harmed or prejudiced by consolidating these complaints, and consolidation will promote administrative efficiency, pursuant to Rule 28-106.108, Florida Administrative Code.

Accordingly, the Petition to Intervene filed by Michael Russ in Docket No. 060640-TP is denied. A separate docket shall be established for the Commission's consideration of Mr. Russ' allegations against BellSouth and CBS, and both dockets shall be consolidated.

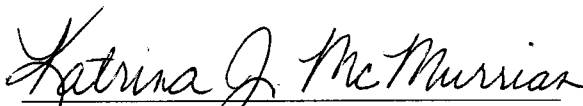
Based on the foregoing, it is, therefore,

ORDERED by Commissioner Katrina J. McMurrian, that the Petition to Intervene filed by Michael Russ is hereby denied. It is further

ORDERED that a docket shall be established for Michael Russ' complaint against BellSouth Telecommunications, Inc. and Evercom Systems (d/b/a Correctional Billing Services). It is further

ORDERED that Docket No. 060640-TP and the newly established docket shall be consolidated.

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 6th day of March, 2007.


KATRINA J. McMURRIAN
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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-

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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 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.