

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed tariff by SOUTHERN BELL) DOCKET NO. 881301-TL
 TELEPHONE AND TELEGRAPH COMPANY to comply)
 with the FCC memorandum opinion and order) ORDER NO. 21647
 in Docket No. 88-221 to deregulate)
 customer dialed account recording) ISSUED: 8-1-89
)

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER HOLDING PREVIOUS ORDER IN
 ABEYANCE AND SUSPENDING CURRENT TARIFF

BY THE COMMISSION:

On September 22, 1988, Southern Bell Telephone & Telegraph Company (Southern Bell) filed a proposed tariff revision to deregulate the provision of its Customer Dialed Account Recording (CDAR) feature, offered as a complement to the bundled ESSX tariff. CDAR allows an ESSX customer to append a user-defined "account" code to calls made from ESSX stations. Southern Bell proposed to delete from its ESSX tariff all rates and service descriptions associated with CDAR, and to require future customers to purchase this feature as an optional deregulated service from a separate Southern Bell affiliate or subsidiary.

This treatment was proposed in response to a decision by the Federal Communications Commission (FCC) in North American Telecommunications Association; Petition for Declaratory Ruling Under Section 64.702 of the [Federal Communications] Commission's Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment, Memorandum Opinion and Order in Docket No. 88-221, 3 FCC.Rcd 4385 (1988) (CDAR Order), authorizing the Bell Operating Companies (BOCs) to continue offering CDAR but, declaring it to be an "enhanced service" and subject to all of the progeny of decisions regarding that category of services. The intended consequence of this decision was that Southern Bell would offer CDAR on a structurally integrated basis and account for it as nonregulated activity.

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In Order No. 20655, issued on January 25, 1989, we held that CDAR should not be deregulated for intrastate purposes. We acknowledged, however, that the CDAR Order would apply to an allocation of interstate usage of the feature. Citing the decision of the U.S. Supreme Court in Louisiana Public Service Commission v. F.C.C., 106 S.Ct. 1890, 90 L.Ed.2d 369 (1986) (the FCC is expressly prohibited from preempting state regulation of depreciation guidelines for facilities used in intrastate communications, even though there would be mixed traffic carried over the facilities), we ruled that it is possible to allocate between interstate and intrastate components of the CDAR service and the costs associated with each. Therefore, an allocation should be done to comply with the CDAR Order.

On February 9, 1989, Southern Bell timely filed a Motion for Reconsideration of Order No. 20655, pursuant to Rule 25-22.060, Florida Administrative Code. In support of its Motion, Southern Bell argues that it is placed in an untenable position of either violating the FCC's CDAR Order or this Commission's Order. The Motion further outlines the jurisdictional conflict created by the FCC's decisions in the Computer II and Computer III Inquiries declaring all "enhanced services" to be non-common carrier services and preempting state regulation of same, the FCC's CDAR Order declaring CDAR to be an enhanced service, and Order No. 20655. Southern Bell argues that, inasmuch as a final resolution of this conflict is pending before the U.S. Circuit Court of Appeals for the Ninth Circuit in People of the State of California, et. al., v. FCC, Case Nos. 87-7230, and 88-7183, this Commission's order cannot resolve the underlying issues of approving or disapproving the tariff.

We recognize that the basic jurisdictional conflict between the FCC and this Commission will ultimately be resolved in the courts. Upon consideration we find it appropriate to hold Order No. 20655 1989 in abeyance pending resolution of the 9th Circuit litigation. In addition, Southern Bell has committed to hold its CDAR tariff filing in suspense pending resolution in the Ninth Circuit. As there are no current ORDER customers on the CDAR tariff, no one will be affected by the unavailability of the service pending the Ninth Circuit appeal and service cannot be offered pending said resolution.

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Based on the foregoing, it is

ORDERED that Order No. 20655, issued on January 25, 1989, shall be held in abeyance pending resolution of the case of People of the State of California et al versus FCC, case numbers 87-7230 and 88-7183 now pending in the U.S. Circuit of Appeals for the 9th Circuit as set forth in the body of this Order. It is further

ORDERED that Southern Bell Telephone and Telegraph Company's Customer Dialed Account Recording tariff is suspended as set forth in the body of this Order. It is further

ORDERED that Southern Bell shall not offer Customer Dialed Account Recording service as set forth in the body of this Order. It is further

ORDERED that this docket will remain open pending resolution of the issues encompassed herein.

By ORDER of the Florida Public Service Commission,
this 1st day of AUGUST, 1989.



STEVE TRIBBLE, 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

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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 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 or sewer 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.