

FLORIDA PUBLIC SERVICE COMMISSION
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

MEMORANDUM

July 25, 1991

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF LEGAL SERVICES [KURLIN] pak
DIVISION OF COMMUNICATIONS [NORTON]

RE : DOCKET NO. 910486-TL - COMPLAINT OF GHF ASSOCIATES
AGAINST SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
REGARDING THE BILLING FOR ESSX SERVICE

AGENDA: AUGUST 6, 1991 - CONTROVERSIAL - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

T. P. N.

CASE BACKGROUND

On January 9, 1991, Mr. Steven M. Gray of GHF Associates filed a complaint against Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) questioning the validity of the billing for ESSX service for 30 lines listed for Audio Adventures and billed to GHF Associates. Mr. Gray asserted that in March 1990, he had requested that Southern Bell temporarily suspend his ESSX service. He stated that he later received a bill for \$14,875 for termination charges and was informed that Southern Bell does not suspend, only terminates ESSX service. Mr. Gray requested a refund of the amount paid, and asked that he be granted relief from the charges billed pursuant to the termination of service.

By Order No. 24654, issued June 11, 1991 (Attachment 1, pages 4-8), the Commission denied Mr. Gray's complaint. The proposed agency action required a response by close of business on July 2, 1991. On July 3, Mr. Gray's Petition for Formal Proceeding was received at the Commission (Attachment 2, pages 9-12). On July 15, we received Mr. Gray's Motion to Move Petition out of Time (Attachment 3, pages 13-15).

DOCUMENT NUMBER-DATE

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DISCUSSION OF ISSUES

ISSUE NO. 1: Should the Commission grant Mr. Gray's Motion to Move Petition out of Time?

RECOMMENDATION: No. The Commission should not grant Mr. Gray's Motion to Move Petition out of Time.

STAFF ANALYSIS: On July 15, 1991, Mr. Gray filed a Motion to Move Petition out of Time. In his motion he claims that he mailed his Petition for Formal Proceeding from Dade County on July 1, 1991, but for some reason the petition was not delivered to the Division of Records and Reporting in Tallahassee until July 3, 1991. Staff believes that it was not reasonable for Mr. Gray to expect that one day was sufficient mailing time from Miami to Tallahassee. Order No. 24654 specified that a petition must be received by the Director of the Division of Records and Reporting by the close of business July 2, 1991. Mr. Gray fails to show any good cause for granting his request to accept late filing of his Petition for Formal Proceeding. Therefore, Mr. Gray's Motion to Move Petition out of Time should be denied.

ISSUE NO. 2: Should the Commission grant Mr. Gray's Petition for Formal Proceeding?

PRIMARY RECOMMENDATION: No. If the Commission approves the staff's recommendation in Issue 1, then Mr. Gray's Petition for Formal Proceeding should not be granted.

ALTERNATE RECOMMENDATION: If the Commission denies the Staff's Recommendation in Issue 1 and grants the Motion to Move Petition out of Time, then the Commission should consider Mr. Gray's Petition for Formal Proceeding.

STAFF ANALYSIS FOR PRIMARY RECOMMENDATION: If the Commission approves the staff's recommendation in Issue 1, and denies the Motion to Move Petition out of Time, then Mr. Gray's Petition for Formal Proceeding should be denied. Rule 25-22.029(4), Florida

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Administrative Code, provides that one whose substantial interests may be affected by the Commission's proposed action may file a petition for a formal hearing. However, any such petition shall be filed within fourteen days after service of the written notice. An additional five days is added for service by mail. Order No. 24654 was issued June 11, 1991. The Order required a petition to be filed by July 2, 1991. Mr. Gray's petition was not filed until July 3, 1991. Rule 25-22.036(9)(a)(1) gives the Commission the authority to deny an untimely petition. Therefore, if the Commission denies the Motion to Move Petition out of Time, then the Petition for Formal Proceeding should be denied as untimely filed.

STAFF ANALYSIS FOR ALTERNATE RECOMMENDATION: If the Commission denies the Staff's Recommendation in Issue 1 and grants the Motion to Move Petition out of Time, then the Commission should consider Mr. Gray's Petition for Formal Proceeding. The Commission should direct that Mr. Gray's Complaint be served on Southern Bell, requiring the Company to file an answer within 20 days, as provided by Rule 25-22.037(1).

ISSUE 3: Should this docket be closed?

STAFF RECOMMENDATION: If the Commission approves the Staff Recommendations in Issues 1 and 2. Then this docket should be closed upon issuance of the final order. If the Commission denies the Staff Recommendations, then this docket shall remain open pending further proceedings.