

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for partial) DOCKET NO. 920464-TL
stay of Order Nos. 21815 and) ORDER NO. PSC-92-0637-FOF-TL
23183, treatment of Customer) ISSUED: 07/10/92
Proprietary Network Information)
by BellSouth Telecommunications,))
Inc. d/b/a SOUTHERN BELL TELE-)
PHONE AND TELEGRAPH COMPANY)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER DENYING REQUESTED STAY

BY THE COMMISSION:

On May 15, 1992, BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) filed a Petition for Partial Stay of Order Nos. 21815 and 23183 (the Orders) insofar as they relate to the use of Customer Proprietary Network Information (CPNI), for customers with more than 20 lines.

Docket No. 880423-TP was opened as an investigation into the statewide offering of access to the local network for the purpose of providing information services. The Commission made several findings regarding the use of CPNI. Specifically, by Order No. 21815, issued September 5, 1989, the Commission included in the definition of CPNI the customer's name, billing address, billed telephone number, and the quantities of all services used by the customer. Additionally, the Commission required all information service providers (ISPs), including the local exchange company (LEC) affiliated ISP, to obtain written authorization from the customer before accessing that customer's CPNI. On reconsideration, in Order No. 23183, issued July 13, 1990, the Commission clarified that its CPNI decision was intended to restrict unauthorized use of CPNI for LEC mass marketing activities, and was not intended to restrict individual customer initiated contacts.

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Since the issuance of the Orders, the Federal Communications Commission (FCC) has issued a number of orders that require Southern Bell to take certain specified action. In the Computer Inquiry III Remand Decision (CI-3), issued December 20, 1991, the FCC preempted state CPNI prior authorization rules where the state rules are more restrictive than the FCC's. In that same decision the FCC required that the Regional Bell Operating Companies (BOCs) obtain prior written authorization from those customers with more than 20 lines before using their CPNI to market enhanced services. Additionally, CI-3 rejected the prior authorization requirement for customers with 20 lines or fewer because it would preclude the RBOCs from offering small customers "one stop shopping" for both basic and enhanced services. Finally, the FCC ordered the RBOCs to implement the prior authorization requirement by June 20, 1992.

Southern Bell has received FCC approval of its CPNI authorization implementation plans. Under that plan, the Company must now examine its records and make use of CPNI to identify and contact customers with more than 20 lines. Southern Bell will inform those customers of the federal CPNI rule and seek written authorization from them.

Our Orders require that written authorization be obtained from all customers to use their CPNI for marketing purposes, regardless of number of lines. But, we do not believe it is necessary to require LECs to obtain prior authorization to access CPNI simply to identify and contact customers to solicit for written authorization.

According to the FCC approved implementation plan, Southern Bell will not market enhanced services during the effort to obtain authorization. We believe that the use of CPNI to identify and contact customers does not violate our Orders, as long as the contact involves only informing customers of their CPNI rights and requesting authorization to use CPNI for marketing enhanced service. Therefore the stay, as requested by Southern Bell, is unnecessary.

We believe that Southern Bell needs a stay of our Orders only if it plans to use CPNI to market enhanced services to customers with 20 or fewer lines. In that case, Florida would require the LECs to obtain prior authorization from these customers, while the FCC does not. Under the FCC rule, Southern Bell may use small customers' CPNI to identify, contact, and market enhanced services to them without any prior authorization.

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The FCC's preemption of state requirements is again before the Ninth Circuit. In order to avoid conflicting requirements for Southern Bell pending resolution of those proceedings, we hereby, on our own motion, stay those portions of our Orders restricting access to CPNI of customers with 20 or fewer lines. We believe that this action is consistent with our actions in previous jurisdictional conflicts.

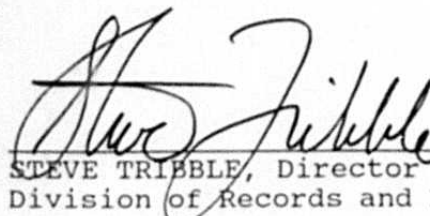
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Bellsouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company's petition for a stay of portions of Orders Nos. 21815 and 23183 that would prohibit the use of Customer Proprietary Network Information to identify and contact customers with more than 20 lines for informational purposes is hereby denied as unnecessary. It is further

ORDERED that, in order to avoid conflict with the Federal Communications Commission's rulings pending resolution of the Ninth Circuit jurisdictional proceedings, those portions of Orders Nos. 21815 and 23183 restricting access to Customer Proprietary Network Information for marketing purposes without prior authorization for customers with 20 or fewer lines are hereby stayed. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 10th day of July, 1992.



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 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.