

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Traders) DOCKET NO. 930715-TL
Ocean Resort against BELLSOUTH) ORDER NO. PSC-93-1263-AS-TL
TELECOMMUNICATIONS, INC. d/b/a) ISSUED: August 31, 1993
SOUTHERN BELL TELEPHONE AND)
TELEGRAPH COMPANY regarding)
leaky PBX charges.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On March 17, 1993, we received a letter from Alex Tomas, Vice President of Cost Containment Services Inc., requesting a refund of leaky PBX charges which had been billed to his client, Traders Ocean Resort. Mr. Tomas contended Traders Ocean Resort's PBX did not leak, and therefore Traders should not have been billed the leaky PBX charges which it had paid since 1986. Mr. Tomas based his argument on the wording of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company's (Southern Bell's or the Company's) tariff A 3.12.1, Special Access Services Capable of Using the Local Exchange Network, which reads "when a Special Access Line, intraLATA interexchange private line or Private Bypass Facility is connected to a device capable of and for the intention of completing calls into the local exchange network, there will be an additional Measured or Message charge associated with the flat rate exchange service rate for that device."

Mr. Tomas stated that the key word in this section was the initial word "when," and wrote that "Because Traders never had a

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Special Line, intraLATA interexchange private line or Private Bypass Facility, they should never have been subject to these requirements nor charged leaky PBX charges."

Approval for the Special Access Services tariff in question goes back to 1985. At that time, pursuant to Order 14452, we ordered implementation of certain leaky PBX charges and required the local exchange companies to file tariffs accordingly. The companies were required to notify customers regarding the leaky PBX policy and the customer was responsible for returning a certification that his PBX did not leak in order to avoid payment of the new leaky PBX charges. Southern Bell, Central Telephone, and United Telephone initially had a low percentage of customers certifying as non-leaky, and therefore we set established, by Order 15480, a schedule for the companies to follow in certifying customers. This schedule included the following:

12/6/85 - File certification letter with PSC for review

12/8/85 - Send certification letter to customer

2/8/86 through 3/16/86 - Company follow-up to verify that companies properly certified.

3/16/86 - effective date of tariff

In the instant case, Southern Bell reported to our staff that it followed the established procedures by sending a letter and an exemption certificate to Traders Ocean Resort on December 8, 1985 regarding the leaky PBX policy. The exemption certificate was not returned, and Southern Bell says it followed up with a letter to the customer on February 20, 1986. No response was received, and leaky PBX charges were billed.

Records indicate that on October 30, 1992, Southern Bell received a call from Mr. Tomas, and an unsigned fax from the customer's vendor stating the PBX did not leak. Mr. Tomas requested a refund of \$12,789.34 for past leaky charges on behalf of his client. Southern Bell explained the requirement for a return of an exemption certificate and that it needed instructions for handling the trunk reconfiguration. The Company reports that it followed up with Mr. Tomas six times in November, December and January, but no exemption certificate was ever received. Instructions for the reconfiguration were received in two letters dated February 24, 1993 and March 4, 1993.

On March 15, 1993, Southern Bell issued a service order with an effective date of March 24, 1993 to change the customer from flat rate leaky PBX trunks to measured non-leaky PBX trunks. Southern Bell credited the customer \$916.93 for leaky charges from October 30, 1992 (the date it received the vendor letter advising the PBX did not leak) to March 24, 1993 (the effective date of the billing change from leaky to non-leaky).

Our staff advised Mr. Tomas by letter dated April 30, 1993 that it appeared Southern Bell had complied with applicable orders concerning leaky PBX and that no further refund was required. Mr. Tomas disputed this finding, and requested an informal conference on his complaint. The conference was held July 7, 1993, in Ft. Lauderdale with staff, representatives of Cost Containment Services, and representatives of Southern Bell. At the conference, Mr. Tomas increased the amount of the refund he was requesting to \$48,466.05. No settlement was reached.

Southern Bell and Cost Containment Services both made post-conference filings on July 15, 1993 to clarify questions and outline their positions. Mr. Tomas revised his refund request to \$21,192.33 at that time. The instant docket was opened on July 20, 1993. On August 2, our staff received a telephone call from Mr. Tomas who advised that a settlement with Southern Bell had been reached. The settlement was confirmed by a written statement dated August 3, 1993, pursuant to Rule 25-22.032 (11). The settlement agreement is Attachment A of this Order.

Rule 25-22.032 (11), Florida Administrative Code provides that:

At any time the parties may agree to settle their dispute. If a settlement is reached, the parties or their representatives shall file with the Division of Consumer Affairs a written statement to that effect. The statement shall indicate that the settlement is binding on both parties and that the parties waive any right to further review or action by the commission. The Division shall, if the complaint has been docketed, submit the statement to the Commission for approval.

The agreement contains the language required by the aforementioned Rule and provides for a refund of \$14,803.34 to Traders Ocean Resort for leaky PBX charges.

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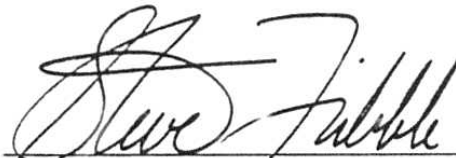
Although Southern Bell apparently complied with PSC requirements concerning leaky PBX billing, it appears the customer has paid leaky PBX charges when the PBX did not leak. Upon review, we shall approve the settlement agreement.

Therefore, it is

ORDERED by the Florida Public Service Commission that the settlement agreement between Trader's Ocean Resort and Southern Bell is hereby approved. It is further

ORDERED that this docket shall be closed at the end of the proposed agency action protest period, assuming no timely protest is filed.

By ORDER of the Florida Public Service Commission this 31st day of August, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

CWM

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on September 21, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.

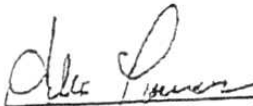
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ATTACHMENT A

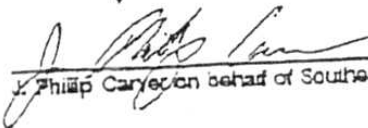
Settlement Agreement
Complaint Number 55624P

By signing the following statement, the parties agree that a satisfactory resolution of the complaint has been reached and understand that the settlement is binding on both parties and that the parties waive any right to further review or action by the commission.

Southern Bell and Traders Ocean Resort agree to a settlement of \$14,603.34 for the leaky PBX dispute. This is a settlement of a disputed matter and the payment of the above amount is not intended to be, nor shall it be, construed as an admission of liability.


Customer: Alex Tomas on behalf of Traders

8-3-93
Date


J. Philip Cary on behalf of Southern Bell

8/3/93
Date

Margaret Ring, FPSC

Date