

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0050

MEMORANDUM

April 2, 1997

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING

**FROM:** DIVISION OF LEGAL SERVICES (CULPEPPER) *CC*  
DIVISION OF CONSUMER AFFAIRS (RASSBERRY) *cc*  
DIVISION OF COMMUNICATIONS (MUSSELMITH) *cc* *9/4*

**RE:** DOCKET NO. 970371-TL - COMPLAINT OF MARIE AND DOMINIQUE  
GILET AGAINST BELL SOUTH TELECOMMUNICATIONS, - INC.  
REGARDING SEPARATE RESIDENTIAL LONG DISTANCE BILLING

**AGENDA:** APRIL 14, 1997 - REGULAR AGENDA - PROPOSED AGENCY ACTION  
FOR ISSUE 2 - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** APRIL 7, 1997 - COMPLIANCE WITH RULE  
25-22.032(8), FLORIDA ADMINISTRATIVE CODE

**SPECIAL INSTRUCTIONS:** I:\PSC\LEG\WP\970371TL.RCM

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CASE BACKGROUND

On October 7, 1996, Mr. Dominique Gilet filed a complaint with the Commission's Division of Consumer Affairs against BellSouth Telecommunications, Inc., (BellSouth) on behalf of himself and his wife, Marie Gilet. Mr. Gilet asserted that BellSouth had interrupted the Gilet's service on October 1, 1996, for nonpayment of toll charges. The Gilets ask that the billed amount of \$404.80 in toll charges be transferred and billed directly by AT&T.

BellSouth states that its records reflect that on September 19, 1996, the Company sent the Gilets a letter advising them that they had unusually high toll charges on their account amounting to \$500.57. The letter further stated that the bill needed to be paid by September 26, 1996, in order to avoid disconnection of service for nonpayment. The Company did not receive a response or payment. Therefore, on October 1, 1996, BellSouth reviewed the account, and finding no payment, disconnected the Gilet's service.

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FPSC-RECORDS/REPORTING

DOCKET NO. 970371-TL  
DATE: APRIL 2, 1997

On October 2, 1996, Mr. Gilet called the Company regarding the disconnection. Mr. Gilet was informed that the disconnection was for nonpayment of excessively high toll charges, and he was referred to the September 19, 1996, letter demanding payment. Mr. Gilet responded by paying BellSouth his local service charges of \$33.10, leaving a toll balance of \$467.47. On October 7, 1996, Mr. Gilet called BellSouth again asking why the Gilet's service had not been reconnected. He was reminded by BellSouth that he needed to pay the remaining balance of \$467.47 to have his service reconnected. Mr. Gilet then called the Commission's Division of Consumer Affairs and filed this complaint.

Following his original complaint, the customer received his October 13, 1996, bill in the amount of \$499.81. That bill included the \$467.47 balance, and current charges of \$32.34. On October 30th, the final bill was rendered totalling \$479.80, which included a prorated credit of \$20.01 for service not used due to the disconnection.

On December 11, 1996, staff received a letter from Mr. Gilet wherein Mr. Gilet objected to Rule 25-4.110(3)(a), Florida Administrative Code, which allows BellSouth to demand immediate payment of an excessive long distance bill. On December 16, 1996, Mr. Gilet requested an informal conference. On January 6, 1997, the customer made a payment of \$75.00, leaving a balance of \$404.80.

On March 6, 1997, an informal conference was held in Riviera Beach, Florida, between the customer, Commission staff, and representatives for BellSouth. No settlement was reached at this conference. The customer then asked for the opportunity to file additional information after the conference. Thereafter, on March 17 and 18, 1997, duplicate letters were received from Mr. Gilet. No new issues or facts were raised in Mr. Gilet's letters. Staff, therefore, makes the following recommendation.

DOCKET NO. 970371-TL  
DATE: APRIL 2, 1997

### DISCUSSION OF ISSUES

**ISSUE 1:** Should the request of Dominique and Marie Gilet to have the billed amount of \$404.80 transferred and billed directly by AT&T be granted?

**RECOMMENDATION:** The complaint should be dismissed. There are no rules, regulations, or tariffs that require the billed amount for \$404.80 to be transferred to AT&T for direct billing. Therefore, there is no relief that the Commission could grant.

**STAFF ANALYSIS:** On October 28, 1996, staff sent a letter to Mr. Gilet which stated that BellSouth was not in violation of Commission rules. The customer responded with two letters, one dated November 6, 1996, and the other dated December 11, 1996. In both letters, Mr. Gilet expressed his opposition to Rule 25-4.110, Florida Administrative Code, which allows BellSouth to demand immediate payment of excessive high toll charges. On December 16, 1996, Mr. Gilet requested an informal conference. On January 6, 1997, Mr. Gilet made a payment of \$75.00 which reduced the amount due to \$404.80.

On March 6, 1997, an informal conference was held at the Counsel Chambers of the Riviera Beach City Hall, 600 West Blue Heron Boulevard, Riviera Beach, Florida. In attendance were Mr. Dominique Gilet, BellSouth representatives, Ms. Pat Godsil, Ms. Eileen Roth, Attorney Anna Marie Lemoine, and a staff member from the Commission's Division of Consumer Affairs. Ms. Sandy Hinton with AT&T participated by telephone.

At the conference the customer complained that his service should not have been disconnected before October 5, 1996, which was the past due date on his regular bill. The high toll bill was generated after the issuance of Mr. Gilet's regular September billing statement. Mr. Gilet further asserted that the Company did not give him a valid reason for the disconnection. Mr. Gilet then requested that his telephone service be restored and that he and his family be compensated for pain and damages resulting from the disconnection.

Ms. Lemoine responded that BellSouth's approved tariff, A2.4.3(G)(2), Payment Arrangements and Credit Allowances, states:

(G) Bills for service shall not be considered delinquent prior to the expiration of fifteen days from the date of mailing or delivery by the company. However, the company

may demand immediate payment under the following circumstances:

(2) Where toll service is two times greater than the subscriber's average usage as reflected on the monthly bills for the three months prior to the current bill or, in the case of a new customer who has been receiving service for less than four months, where the toll service is twice the estimated monthly toll service.

Mr. Gilet's previous bills averaged \$50 a month. The customer's bill jumped, however, to over \$500 between the Gilet's regular billing dates. As a result, BellSouth issued a high toll letter on September 19, 1996, requesting payment of the high toll amount by September 26, 1996, in order to prevent interruption of service and a restoration of service charge. BellSouth's representatives reported that the customer did not call until October 2, 1996, the day after the service had been disconnected.

Mr. Gilet, however, argued that he did not receive the September 19th high toll letter. Mr. Gilet also questioned the following wording on the bottom of his telephone bill:

This portion of your bill is provided as a service to AT&T. There is no connection between BellSouth and AT&T. You may choose another company for your long distance telephone calls while still receiving your local telephone service from BellSouth.

Mr. Gilet felt that the statement was misleading and deceptive. He also objected to being held accountable for a contract between BellSouth and AT&T. Mr. Gilet did not, however, dispute the long distance charges. He simply refused to pay BellSouth for long distance services rendered by AT&T.

Ms. Lemoine explained that the statement is there as a result of divestiture. Ms. Lemoine stated that at one time AT&T and BellSouth were the same company, and that the statement is now placed in bills to make it clear that BellSouth and AT&T are no longer the same company. The statement is intended to reflect that BellSouth does not discriminate, and does not favor AT&T over any other long distance provider.

Mr. Gilet then asserted that he had sent a check in payment of the toll charges directly to AT&T. AT&T's representative checked AT&T's records and found no payments credited for this customer. In addition, Ms. Hinton noted that AT&T could not receive a payment

**DOCKET NO. 970371-TL**  
**DATE: APRIL 2, 1997**

on an account for which AT&T does not bill. Staff notes that Mr. Gilet did not produce a cancelled check to AT&T, nor a check number, in response. Ms. Hinton also stated that, previously, several AT&T supervisors had explained to the Gilets that AT&T cannot receive payments for charges that BellSouth bills directly on AT&T's behalf. Ms. Hinton explained that AT&T also offered to set up separate billing for the Gilets on a going-forward basis. The Gilets were, however, informed that the previous charges would have to be paid directly to BellSouth because BellSouth had already paid AT&T for this long distance bill.

In his March 17 and 18, 1997, letters to Commission staff, Mr. Gilet reiterated the same points that he made during the informal conference on March 6, 1997. Mr. Gilet also forwarded copies of his BellSouth bills which included billing for MCI and AT&T. The customer further stated that BellSouth should be guilty of at least two things: misrepresentation and violation of Rules 25-4.110(3)(a) and 25-4.113(1)(e), Florida Administrative Code.

Staff does not believe that BellSouth has violated either of the cited rules. Rule 25-4.110(3)(a), Florida Administrative Code, states:

Bills shall not be considered delinquent prior to the expiration of 15 days from the date of mailing or delivery by the utility. However, the company may demand immediate payment under the following circumstances:

1. Where service is terminated or abandoned;
2. Where toll service is two times greater than the subscriber's average usage as reflected on the monthly bills for the three months prior to the current bill, or, in the case of a new customer who has been receiving service for less than four months, where the toll service is twice the estimated monthly toll service; or
3. Where the company has reason to believe that a business subscriber is about to go out of business or that bankruptcy is imminent for that subscriber.

Rule 25-4.113(1)(e), F.A.C., states:

(1) As applicable, the company may refuse or discontinue telephone service under the following conditions provided that, unless otherwise stated, the customer shall be given notice and allowed a reasonable time to comply with

**DOCKET NO. 970371-TL**  
**DATE: APRIL 2, 1997**

**any rule or remedy any deficiency:**

**(e) For noncompliance with or violation of the Commission's regulations or the company's rules and regulations on file with the Commission, provided that 5 working days written notice is given before termination.**

**BellSouth issued a high toll letter to this customer on September 19, 1996, seeking payment of the high toll charges by September 26, 1996, and indicating that prompt payment would prevent interruption of service. The Company asserts that the letter was not returned undelivered, the customer did not call to discuss the payment, nor was any payment received by September 26, 1996. The company further asserts that it gave the customer a grace period between September 26, and October 1, 1996, as a courtesy. On October 1, BellSouth reviewed the account, found no payment, and disconnected service.**

**Staff reiterates that it does not believe that BellSouth has violated either Rule 25-4.110(3)(a), Florida Administrative Code, or Rule 25-4.113(1)(e), Florida Administrative Code. Staff notes, however, that in reviewing BellSouth's standard high toll letter and the procedures the Company follows in handling high toll cases, a particular concern has developed that the wording of Rule 25-4.113(1)(e), Florida Administrative Code, could possibly be construed in either of two ways. The concern arose in discussions regarding whether the September 19, 1996, high toll letter also constituted the notice required by Rule 25-4.113(1)(e), Florida Administrative Code. BellSouth representatives have stated that they believe the high toll letter serves the dual purpose of demand for immediate payment and notice in accordance with the Rule. There has, however, been some discussion as to whether Rule 25-4.113(1)(e), Florida Administrative Code, requires 5 days notice once the customer has actually violated a rule or has failed to comply with BellSouth's tariff. If this interpretation is correct, additional notice would be required after the customer failed to comply with the demand for payment in the high toll letter.**

**Staff notes the similarity of this complaint to one addressed in Docket No. 960824-TL. In that Docket, Mr. Varano did not deny responsibility for the long distance charges on his BellSouth bill. However, because he was not a party to the BellSouth and AT&T agreement, he argued that he should not have to abide by their agreement and should not have to pay his long distance charges to BellSouth. In its order issued September 17, 1996, the Commission stated:**

DOCKET NO. 970371-TL  
DATE: APRIL 2, 1997

The charges. . . are legitimate, and the consumer does not dispute having made the calls. BellSouth is a billing agent for AT&T and the customer should pay this bill directly to BellSouth. The issue that the customer disputes regarding the contractual agreement between BellSouth and AT&T is not regulated by us. We have no jurisdiction to require AT&T to direct bill the customer, and there are no rules or statutes which provide a basis for granting the customer's request.

Page 2, Order No. PSC-96-1159-FOF-TL.

Staff believes that the same rationale is applicable in this case.

Based on the foregoing, staff recommends that BellSouth's actions in this case are in compliance with Rule 25-4.110(3)(a) and Rule 25-4.113(1)(e), Florida Administrative Code, and with BellSouth's tariff. Furthermore, regarding Mr. Gilet's objections pertaining to the contract between BellSouth and AT&T, the Commission does not have jurisdiction over billing contracts between the companies. Even when viewed in the light most favorable to the customer, staff does not believe that the facts of this complaint set forth grounds upon which the Commission could grant relief. As such, staff recommends that the complaint be dismissed.

DOCKET NO. 970371-TL  
DATE: APRIL 2, 1997

**ISSUE 2:** Should the Commission order BellSouth to revise its standardized high toll letter to specifically state that service will be interrupted if payment is not received by the date due?

**RECOMMENDATION:** Yes. BellSouth should be ordered to revise its current high toll letter to specifically state that the customer's service will be interrupted if payment is not received by the date due. Staff believes that the recommended revision will eliminate any customer confusion regarding the purpose of the high toll letter and will better provide the notice required by Rule 25-4.113(1)(e), Florida Administrative Code.

**STAFF ANALYSIS:** Although staff believes that BellSouth has complied with the notice requirement of Rule 25-4.113(1)(e), Florida Administrative Code, staff recommends that the Commission order BellSouth to revise its standardized high toll letter. Staff believes that some customers could be confused by somewhat ambiguous wording in the letter, which is set forth below:

We would appreciate payment by [date inserted]. Prompt payment of all (regulated) charges will prevent interruption of your telephone service and a restoration of service charge.

Staff believes that the language set forth above could lead a customer to believe that his service might not be interrupted even if he does not pay the long distance toll charges by the date set forth in the letter. This is, however, inaccurate. Staff, therefore, recommends that the cited language be revised as follows:

In accordance with Rule 25-4.110(3)(a)(2), Florida Administrative Code, your payment of (amount of toll charge) must be received by (due date). If payment is not received by the close of business on (date due) your service will be interrupted and you will be subject to a service charge in order to restore service.

Staff believes the revised language will better inform customers of the consequences of nonpayment of the high toll charge.

Furthermore, in light of the somewhat ambiguous language in BellSouth's current high toll letter, staff believes that BellSouth should be encouraged to reach some sort of payment arrangement with the Gilets.



DOCKET NO. 970371-TL  
DATE: APRIL 2, 1997

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes. If no person whose substantial interests are affected by the Commission's proposed agency action in Issue 2, files a request for a Section 120.57, Florida Statutes, hearing within twenty-one days, this docket should be closed.

**STAFF ANALYSIS:** If no person whose substantial interests are affected by the Commission's proposed agency action in Issue 2, files a request for a Section 120.57, Florida Statutes, hearing within twenty-one days, this docket should be closed.