

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Marie and) DOCKET NO. 970371-TL
Dominique Gilet against) ORDER NO. PSC-97-0606-FOF-TL
BellSouth Telecommunications,) ISSUED: May 27, 1997
Inc. regarding separate)
residential long distance)
billing.)
_____)

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER DISMISSING COMPLAINT AND REQUIRING
BELLSOUTH TELECOMMUNICATIONS, INC. TO REVISE ITS HIGH TOLL LETTER

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On October 7, 1996, Mr. Dominique Gilet filed a complaint with the Commission's Division of Consumer Affairs against BellSouth Telecommunications, Inc., (BellSouth or Company) 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 asked that the billed amount of \$404.80 in toll charges be transferred and billed directly by AT&T.

BellSouth stated that its records indicated 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.

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Therefore, on October 1, 1996, BellSouth reviewed the account, and finding no payment, disconnected the Gilet's service.

Mr. Gilet stated that on October 2, 1996, he called the Company regarding the disconnection. Mr. Gilet asserted that he 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. Mr. Gilet stated that on October 7, 1996, he contacted BellSouth again and asked why the Gilet's service had not been reconnected. He asserted that BellSouth stated 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 30, 1996, 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, Commission 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, our staff received duplicate letters from Mr. Gilet. Mr. Gilet's letters raised no new issues or facts.

The Complaint

At the March 6, 1997, informal 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.

BellSouth's representative 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. Ms. Lemoine further indicated that 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 Ms. Hinton 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 on an account for which AT&T does not bill. We note 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.

Upon consideration, we do 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 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 asserted 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 asserted 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.

We reiterate that we do 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. We note, however, that in reviewing BellSouth's standard high toll letter and the procedures the Company follows in handling high toll cases, we became concerned that the wording of Rule 25-4.113(1)(e), Florida Administrative Code, could be construed in either of two ways. Our concern was 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 stated that they believe the high toll letter serves the dual purpose of demand for immediate payment and notice in accordance with the Rule. It appears, however, that Rule 25-4.113(1)(e), Florida Administrative Code, could be interpreted to require 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.

We also note the similarity of this complaint to one addressed in Docket No. 960824-TL. In that Docket, the complainant did not deny responsibility for the long distance charges on his BellSouth bill. Because he was not a party to the BellSouth and AT&T agreement, he argued, however, that he should not have to abide by their agreement and should not have to pay his long distance charges to BellSouth. In our Order issued September 17, 1996, we stated:

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.

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

The same rationale is applicable in this case.

Based on the foregoing, we find 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, the facts of this complaint do not set forth grounds upon which we could grant relief. There are no rules, regulations, or tariffs that require the billed amount for \$404.80 to be transferred to AT&T for direct billing. As such, the complaint is dismissed. In light of the somewhat ambiguous language in BellSouth's current high toll letter, we do, however, encourage BellSouth to reach some sort of payment arrangement with the Gilets.

BellSouth's High Toll Letter

Although BellSouth has complied with the notice requirement of Rule 25-4.113(1)(e), Florida Administrative Code, we shall require BellSouth to revise its standardized high toll letter. Some customers could be confused by somewhat ambiguous wording in the letter, which is set forth below:

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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.

The above language 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. Therefore, BellSouth shall revise its high toll letter so that it better informs customers of the consequences of nonpayment of the high toll charge. BellSouth shall work with Commission staff to develop appropriate language.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the Complaint filed by Marie and Dominique Gilet against BellSouth Telecommunications, Inc. is hereby dismissed. It is further

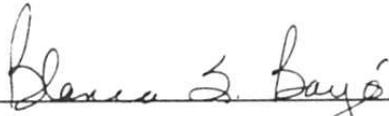
ORDERED that BellSouth Telecommunications, Inc. shall revise its high toll letter as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 27th
day of May, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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

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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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 17, 1997.

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 substantially 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.