



Public Service Commission  
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

**DATE:** SEPTEMBER 6, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAKER)

**FROM:** DIVISION OF LEGAL SERVICES (FUDGE) *JK*  
 DIVISION OF CONSUMER AFFAIRS (STOKES) *JK*  
 DIVISION OF REGULATORY OVERSIGHT (MCCOY) *am*

**RE:** DOCKET NO. 010089-TP - COMPLAINT OF CHARLENE HOAG AGAINST VERIZON FLORIDA INC. AND SPRINT COMMUNICATIONS COMPANY, LIMITED PARTNERSHIP D/B/A SPRINT FOR ALLEGED IMPROPER BILLING.

**AGENDA:** 09/18/01 - REGULAR AGENDA - MOTION FOR RECONSIDERATION - ORAL ARGUMENT REQUESTED - PARTICIPATION ON ISSUE TWO DEPENDENT UPON VOTE ON ISSUE ONE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\010089.RCM

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CASE BACKGROUND

On December 7, 1999, Ms. Charlene Hoag (Ms. Hoag or customer) filed complaint 294613T with Verizon Florida, Inc. (formerly GTE Florida, Inc. and hereafter referred to as Verizon or company) and complaint 294625T with Sprint Communications alleging that her account was billed for calls that she did not make. Verizon is her local provider, while Sprint provides her long distance service.

On December 7, 1999, the Division of Consumer Affairs (CAF) requested information from Verizon and Sprint regarding Ms. Hoag's billing concern.

On December 13, 1999, CAF received Sprint's report. The company stated that it last responded to Ms. Hoag in September 1998. Since that time, Sprint reported that it issued a \$25.40

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credit to her account on November 3, 1998. The company stated that the disputed calls were "directly dialed and legitimate."

CAF received a report from Verizon on December 15, 1999. Verizon reported that it contacted several of the disputed telephone numbers on November 16, 1999. Verizon stated that two calls were to Ms. Hoag's mother's residence, calls to her sister's place of business, and to long distance directory assistance. Verizon also reported that as a precautionary measure, it changed the cable pair serving Ms. Hoag's residence on December 9, 1999. The company stated that the isolated cable pair and feed pair do not show up at any other location except to the crossbox and customer's terminal. Verizon asserted that no tampering was found at the customer's protector or terminal.

On January 12, 2000, CAF received Ms. Hoag's January 5, 2000, letter. She alleged that Verizon found a problem on her line on December 3, 1999, and her service was put on another line. Ms. Hoag claimed that the problem was not corrected. She contended that Verizon and Sprint continued to bill her account for calls that she did not make, and to charge daytime rates for nighttime calls. Furthermore, she contended that they charged her late fees for timely payment. Ms. Hoag stated that as of January 5, 2000, Verizon owed her a credit of \$66.66 and Sprint owed her a credit of \$68.84.

CAF received Ms. Hoag's correspondence to the Office of Public Counsel (OPC) regarding her complaints. Her March 8, 2000, letter stated that as of that date, Verizon owed her a credit of \$69.90 and Sprint owed her a credit of \$79.05.

On March 27, 2000, CAF sent Ms. Hoag a letter explaining the outcome of its investigations, which revealed that the disputed calls were dialed directly from her residence. She was also notified that test calls revealed that the calls were placed to her mother's residence and sister's place of business. CAF also noted that although Verizon did not find any problems with her line, it changed the isolated cable pair as a precaution.

On April 17, 2000, CAF received Ms. Hoag's letter requesting an informal conference. Ms. Hoag still maintains that both companies owe her credits for the disputed calls. CAF received a copy of Verizon's June 12, 2000, letter to Ms. Hoag, wherein the company provided copies of her November 1999 through May 25, 2000,

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bills, and asked Ms. Hoag to mark the disputed calls and return them by June 26, 2000.

Verizon provided CAF with a copy of Ms. Hoag's June 20, 2000, letter to Verizon. Ms. Hoag stated that the bills only covered a six-month period. She stated, "My complaint covers 1 ½ years." Ms. Hoag also enclosed a list of the disputed calls from 1998 to May 25, 2000. She noted that as of June 13, 2000, Verizon owed her a credit of \$78.65 and Sprint owed her a credit of \$89.26.

In Verizon's July 10, 2000, report, it contended that there were no problems with the customer's line. Verizon stated that "considerable" credit was previously issued to the customer's account due to the denied calls. Verizon alleged that Ms. Hoag had a relationship with the majority of the called parties on her disputed-call list or had a purpose for placing the calls. As a result, Verizon asserted that no more credit would be issued to the account.

On August 2, 2000, OPC provided CAF with additional correspondence from Ms. Hoag regarding her complaint and informal conference request. Staff explained to Ms. Hoag that she would be notified of the outcome of her informal conference request. In the meantime, CAF continued its review of the complaints and requested additional reports from both companies.

On November 16, 2000, CAF received a report from Sprint. The company stated that in addition to the \$25.40 credit previously issued, it issued a goodwill gesture credit of \$53.65. These credits equal the long standing disputed charge of \$79.05. CAF notified Verizon about the credit on November 20, 2000. Ms. Hoag was also notified about the \$53.65 credit when she called CAF on December 8, 2000. CAF also explained that it was waiting for an additional report from Verizon.

On December 15, 2000, Verizon provided CAF with a supplemental report which confirmed receipt of the \$53.65 credit from Sprint. The company also reported that since 1998, it has issued a total of \$193.01 in credit to the customer's account as a compromise for valid charges, leaving an outstanding balance of \$144.82 as of December 15, 2000.

By Order No. PSC-01-0521-FOF-TP, issued March 6, 2001, the Commission dismissed Ms. Hoag's request for an informal conference.

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By letter dated March 12, 2001, Ms. Hoag stated that she was filing a notice of appeal and inquired about the filing fee for the appeal.

On May 30, 2001, Ms. Hoag indicated that she wanted her March 12 letter be considered as her Motion for Reconsideration and also requested Oral Argument.

On June 11, 2001, Sprint filed its Objections to Reconsideration of Order Dismissing Request for Informal Conference. On June 13, 2001, Verizon filed its Joinder in Sprint's Objections to Reconsideration of Order Dismissing Request for Informal Conference.

This Commission has jurisdiction pursuant to Section 364.604, Florida Statutes.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the request for oral argument by Ms. Charlene Hoag be granted?

**STAFF RECOMMENDATION:** No. Ms. Hoag has not stated why oral argument would aid the Commission in comprehending and evaluating the issue before it. (FUDGE)

**STAFF ANALYSIS:** By letter dated May 30, 2001, Ms. Hoag requested Oral Argument on her Motion for Reconsideration. However, the request was not filed in accordance with Rule 25-22.058(1), Florida Administrative Code, which requires that requests for oral argument be filed contemporaneous with the filing of the motion.

Rule 25-22.058(1) , Florida Administrative Code, requires that the party requesting oral argument state "with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it."

Ms. Hoag has not stated why oral argument would aid the Commission in comprehending and evaluating the issue before it. Therefore, staff recommends that Ms. Hoag's request for oral argument be denied.

**ISSUE 2:** Should the Motion for Reconsideration filed by Ms. Charlene Hoag be granted?

**STAFF RECOMMENDATION:** No. Neither Ms. Hoag's March 12 letter nor the subsequent letters identify any point of fact or law which was overlooked or the Commission failed to consider in rendering its Order. (FUDGE)

**STAFF ANALYSIS:** By letter dated March 12, 2001, Ms. Hoag stated that she was filing a notice of appeal and inquired about the fee for filing the appeal. By letter dated April 25, 2001, staff asked Ms. Hoag whether she intended her March 12 letter be treated as a Motion for Reconsideration.

On May 30, 2001, Ms. Hoag indicated that she wanted her March 12 letter be considered as her timely Motion for Reconsideration and also requested Oral Argument.

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering its Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3d DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse at 317.

Sprint states that it was never served with any document that would form the basis for reconsideration of the Order, as required by Rule 28-106.110, Florida Administrative Code. While Sprint believes that the letters filed by Ms. Hoag were untimely, it argues that the letters do not conform to the requirements of Rule 25-22.060, Florida Administrative Code, and thus do not constitute a valid motion for reconsideration. Sprint argues that Ms. Hoag's letters do not state any legal grounds upon which the Commission could grant reconsideration. The company contends that she must demonstrate that the Commission overlooked or failed to consider

applicable evidence or relevant law in rendering its decision. See Diamond Cab Co., 146 So. 2d 889.

In Verizon's Joinder in Sprint's Objections, it agrees with Sprint and realleges that Ms. Hoag has failed to meet the standard for reconsideration and requests that the Commission deny reconsideration and decline to reopen the docket.

Staff agrees that neither Ms. Hoag's March 12 letter nor the subsequent letters identify any point of fact or law which was overlooked or the Commission failed to consider in rendering its Order. Her letters simply restate her previous arguments, which is not a proper basis for reconsideration. Therefore, Ms. Hoag's Motion for Reconsideration should be denied.

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

**STAFF RECOMMENDATION:** Yes. If the Commission approves staff's recommendation in Issue 2, no further action is required and this docket should be closed. (FUDGE)

**STAFF ANALYSIS:** No further action is required and this docket should be closed. (FUDGE)