

State of Florida



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: APRIL 11, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (BANKS) *PRB BIC*
DIVISION OF CONSUMER AFFAIRS (STOKES, HICKS) *RH*
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (WATTS) *MS*

RE: DOCKET NO. 010454-TL - COMPLAINT BY DOCUSEARCH
INTERNATIONAL RESEARCH (ELIZABETH LEGARE) AGAINST
BELLSOUTH TELECOMMUNICATIONS, INC. REGARDING ALLEGED
IMPROPER BILLING.

AGENDA: 04/23/02 - REGULAR AGENDA -PROPOSED AGENCY ACTION-
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\GCL\WP\010454.RCM

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COMMISSION CLERK

CASE BACKGROUND

On April 4, 2000, Ms. Elizabeth Legare filed a complaint on behalf of her company Docusearch International Research ("customer" or "Ms. Legare") with the Commission's Division of Consumer Affairs (CAF) against BellSouth Telecommunications, Inc. ("BellSouth" or "company") for improper billing. The customer, who had several phone lines with BellSouth, alleged that BellSouth disconnected her service without cause. Ms. Legare explained that from 1990 to 1994, LDDS WorldCom (LDDS) was her long distance provider and LDDS billed her directly. Ms. Legare also asserted that BellSouth billed her for the LDDS charges and other companies' unauthorized long distance charges and cramming charges. Ms. Legare stated that she would not pay anything on her account until she was awarded a credit. She also alleged that there was significant cross talk and static on her lines, and stated that the telephone lines in her

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subdivision needed to be repaired. CAF advised BellSouth of the customer's complaint on April 4, 2000. In its April 19, 2000, written report, BellSouth responded that Ms. Legare notified its company on February 7, 1998, that the disputed amounts billed by MCI (f/k/a LDDS) dated back to 1990. BellSouth also reported that MCI stated that all of the calls were direct dialed, and no adjustment was made by MCI to the account for the disputed calls.

The report further states that during the course of this complaint investigation, BellSouth discovered that it owed Ms. Legare a \$1,000 credit adjustment that was promised in 1998, but had never been issued. As a result, Ms. Legare received a \$1,000 credit adjustment. In addition, BellSouth asserts that it adjusted Ms. Legare's account for toll charges, 900 charges, and late payment fees totaling approximately \$255. A BellSouth representative contacted Ms. Legare to inform her of the adjustments and to establish a payment arrangement for her current account which had become past due.

On May 24, 2000, CAF sent the customer a letter explaining that a \$1,000 credit had been issued to a previous account, leaving a credit balance which was applied to the outstanding balance remaining on Ms. Legare's business account. The letter also explained that Ms. Legare's service could be denied if the outstanding balance was not paid or if she failed to maintain the payment arrangement established with BellSouth.

On June 12, 2000, Ms. Legare called the Commission's complaint number because BellSouth interrupted her residential telephone service due to nonpayment. According to Ms. Legare, she refused to pay her bill because BellSouth owed her approximately \$2,000 for slamming which occurred during the years 1990 through 1992. Ms. Legare also protested long distance charges appearing on her phone bill. As this complaint was investigated, Ms. Legare was unable to substantiate her claim against BellSouth.

On July 10, 2000, Ms. Legare requested an informal conference. The required Form X was mailed to the customer on July 14, 2000. Although the customer did not return the form prior to the July 29, 2000, deadline, CAF proceeded with scheduling an informal conference because Ms. Legare asserted that she did not receive the form until after the deadline. On the Form X, Ms. Legare maintained that BellSouth owed her an amount in excess of \$2,000.

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On September 27, 2000, staff held an informal conference with the customer and BellSouth. The conference concluded without a settlement, and Ms. Legare further claimed that BellSouth owed her \$5,000. Subsequent to the informal conference and in hopes of a resolution, staff continued its attempt to clarify the facts in the allegations raised by Ms. Legare. Despite several staff requests that Ms. Legare provide documentation of her claims of BellSouth's improper billing. To date, Ms. Legare has not provided staff with the requested documentation. Further, in an attempt to facilitate a resolution between Ms. Legare and BellSouth, staff conducted several conference calls but no resolution was reached.

To further complicate matters, as staff prepared to conclude this investigation, Ms. Legare was hospitalized for an indefinite period of time and her niece, Ms. Brie Legare, advised staff that she had been granted power of attorney. Once staff received verification of Ms. Brie Legare's power of attorney, staff attempted to get further clarification of the issues involving BellSouth, but to no avail. The purpose of staff's recommendation is to close the docket. The customer has not provided any documentation to substantiate her claims. BellSouth has adjusted the customer's account and no further adjustments are recommended. Staff has been advised that the customer is now receiving service from an alternative local exchange company.

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

DISCUSSION OF ISSUES

ISSUE 1: Should BellSouth Telecommunications, Inc., be required to further credit or refund Ms. Elizabeth Legare?

STAFF RECOMMENDATION: No. Staff recommends that the Commission find that BellSouth has properly credited Ms. Legare's account for the disputed charges. (BANKS, STOKES, HICKS, WATTS)

STAFF ANALYSIS: Ms. Legare filed her complaint on April 4, 2000, alleging that BellSouth billed her account for long distance calls from 1990 through 1994 that were also billed by LDDS. To date, Ms. Legare has not provided proof to substantiate her claim of the duplicate charges. Staff has requested specific information and documentation from Ms. Legare regarding the disputed amount and Ms. Legare has not responded.

Although Ms. Legare initially alleged BellSouth owed her approximately \$2,000, she is now arguing that the disputed amount is \$5,000, and that this new amount is due to BellSouth mis-billing intraLATA toll calls to her account. In Ms. Legare's initial complaint, there was no indication that BellSouth improperly billed for intraLATA calls. Furthermore, Ms. Legare's February 2, 1993, bill contained a number of intraLATA calls billed by BellSouth which she did not initially identify as problematic. Even more persuasive to staff is that, according to Commission Order No. PSC-97-1353-FOF-TP, issued October 27, 1997, in Docket No. 930330-TP, it appears that BellSouth customers did not have the option of choosing intraLATA presubscription until April 1997. Staff has concluded that Ms. Legare did not have an option in choosing her intraLATA toll carrier at the time of the alleged claim and therefore, this allegation is without merit.

In its response to CAF, BellSouth stated that the customer is a collection agency, and had two returned checks and outstanding balances on three accounts. Two of the accounts have the same telephone number. BellSouth stated that telephone account number 561-575-0662-646 was disconnected on July 8, 1998, for a past-due amount of \$917.43, and the same telephone number with a different account number was established on the same date. BellSouth reported that the customer disputed long distance calls on account number 561-575-0662-646 from January 1990 through December 1994. BellSouth reported that the customer disputed long distance calls on account number 561-575-0662-646 from January 1999 through

December 1994. BellSouth also stated that the customer owed an additional \$2,000 on Account Number 561-Y51-3873, which was not a part of Ms. Legare's original complaint.

Additionally, BellSouth reported that it received a telephone call from the customer on December 22, 1997, about problems with a calling card. BellSouth stated that it tested the calling card, and found no problems. BellSouth reported that the customer notified the company on January 7, 1998, about a claim against a carrier, without providing any additional information. BellSouth stated that Ms. Legare claimed that BellSouth owed her more than \$1000. BellSouth agreed to check the customer's account and follow up with Ms. Legare.

BellSouth further alleged that Ms. Legare had advised the company that BellSouth's offer of a \$1,000 credit was not sufficient, and asked for bill copies from January 1990. BellSouth stated that it would mail Ms. Legare bill copies from 1992 (when the account was established as a business) through the final bill date of August 1998. In a subsequent report, BellSouth stated that it did not have bill copies prior to 1992. BellSouth reported that it notified the customer that it would not issue any more credits to her account, and referred the customer to her long distance carriers. BellSouth also reported that the \$1,000 credit was applied to the final account bill of \$790.07 on Account Number 561-575-0662-646, and the \$209.93 credit balance was transferred to the customer's current account, 561-575-0662-647. The company stated that it agreed to restore the customer's service on April 5, 2000.

On April 12, 2000, BellSouth alleged that it removed the following long distance charges on the customer's account: \$81.07 for AT&T; \$10.44 for Zero Plus Dialing; \$6.70 for Operator Assistance Network; \$7.40 for 900-number charges; and \$149.64 in late payment charges. These adjustments represent a total deduction of \$255.25. BellSouth contends that the customer was notified about this adjustment on April 12, 2000, and the company explained to the customer that payment arrangements were needed on the \$474.45 account balance. BellSouth also alleged that the customer was notified that a new charge of \$282.21 would be due by April 21, 2000, and explained that this amount was related to BellSouth charges. The company asserted that Ms. Legare was notified that the service would be interrupted again, if she did not call back by April 20, 2000, to make payment arrangements.

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On June 12, 2000, Ms. Legare notified CAF that the BellSouth owed her approximately \$2,000 to credit her residential telephone for slamming from 1990 through 1992. Ms. Legare stated that she received \$1,900 credit on her business account, but she did not receive credit on her residential account. The customer demanded that her telephone service be restored. CAF explained to Ms. Legare that BellSouth could only get her bill copies going back seven years, and she needed to file complaints with the long distance carriers, not BellSouth. Ms. Legare, however, demanded that BellSouth issue the credits. CAF notified BellSouth about the customer's concerns. BellSouth verified that the disconnected telephone numbers were for the customer's residential service.

On June 13, 2000, Ms. Legare called CAF and reiterated that BellSouth owed her \$2,000 from 1990-1992 when telephone number 561-575-0662 was a residential line. Ms. Legare also alleged that she used 10XXX numbers to place calls through TeleCom USA, CTS, and MCI. She argued that the calls should have been billed at four cents a minute, instead of 99 cents a minute. Ms. Legare continued to demand that BellSouth reconnect her telephone numbers.

Ms. Legare's informal conference request states that the dollar amount in dispute is "in excess of \$2,000." However, during the September 27, 2000, informal conference, Ms. Legare stated that in addition to her alleged February 20, 1993, bill there were "thousands of bills that BellSouth owed her credits." Ms. Legare contended that BellSouth should have charged her only \$32.30 for the basic service charge, instead of \$188.39. Staff notes that BellSouth asserted that it did not issue a bill for February 20, 1993, but instead that it issued a bill for February 2, 1993. Ms. Legare claimed that she was billed separately for her long distance calls, and was disputing several items on the alleged February 20, 1993, bill. Ms. Legare also alleged that the credit should be applied to her account for the poor service and constant problems with her lines. She stated that BellSouth owes her \$159.09 (\$188.39-\$32.30), and alleged that the calls should have been billed by LDDS, not BellSouth. Ms. Legare also alleged that BellSouth should adjust the billing on the LDDS calls to nine cents a minute in six seconds increments, instead of 24 cents a minute. Further, Ms. Legare argued that all the long distance charges billed by BellSouth should be removed from her account. Ms. Legare also claimed that she only had checks to show total amounts that she actually paid to the company. She stated that the company now owes her \$5,000.

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In response, BellSouth stated that it did not have a bill amount for \$188.39. BellSouth also contended that it did not have any of the customer's billing records prior to 1992. BellSouth further asserted that it did not know about any disputed charges on the February 2, 1993, bill before the informal conference.

Based on the foregoing, staff believes that BellSouth has properly credited Ms. Legare's account for the disputed charges. Ms. Legare has been unable to document any alleged cramming, slamming, and overcharges, which were billed separately by long distance companies or by BellSouth. BellSouth has, however, documented that it waived certain long distance calls and late payment fees without any corresponding documentation from Ms. Legare. BellSouth stated that it did not have a bill amount for \$188.39. BellSouth also contended that it did not have any of the customer's bills prior to 1992. BellSouth asserted that it did not know about any disputed charges on the February 2, 1993, bill before the informal conference. Therefore, staff recommends that the Commission find that BellSouth has properly credited Ms. Legare's account for the disputed charges.

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ISSUE 2: Should BellSouth be required to take any additional steps to resolve Ms. Legare's concerns about the noise and static on her telephone lines?

STAFF RECOMMENDATION: No. Staff recommends that the Commission find that BellSouth is not required to take any additional steps to resolve Ms. Legare's concern about the noise and static on her telephone lines. (BANKS, STOKES, HICKS, WATTS)

STAFF ANALYSIS: Rule 25-4.070, Florida Administrative Code, provides that each telecommunications company shall make all reasonable efforts to minimize the extent and duration that disrupt or affect a customer's telephone service. BellSouth stated that Ms. Legare reported noise and static on the lines for telephone numbers 561-575-0662, 561-743-2366, 561-743-9774, and 561-747-9187 in 1999 and 2000. The report indicated that the lines were tested and no problems were found. However, on February 23, 2000, BellSouth stated that a defective channel unit was found and replaced on telephone numbers 561-743-2366 and 561-743-9774. As a result of Ms. Legare's complaint, the company reported that it performed several tests on the customer's line for telephone number 561-575-0662 on April 6, 2000, and no problems were found. BellSouth stated that it was possible that technicians could have been using Ms. Legare's line in the cross box. As a precautionary measure, BellSouth stated that it would put red caps on Ms. Legare's line in the cross box to prevent technicians from using it. Based on the information provided, it appears that BellSouth made reasonable attempts to minimize any conditions that might disrupt Ms. Legare's telephone service. Therefore, staff recommends that the Commission find that BellSouth is not required to take any additional steps to resolve Ms. Legare's concern about the noise and static on her telephone lines.

ISSUE 3: Did BellSouth improperly disconnect Ms. Legare's telephone service?

STAFF RECOMMENDATION: No. Staff recommends that the Commission find that BellSouth properly disconnected Ms. Legare's service when Ms. Legare failed to render payment for the undisputed charges. (BANKS, STOKES, HICKS, WATTS)

STAFF ANALYSIS: When Ms. Legare filed the complaint on April 4, 2000, staff notified Ms. Legare that she needed to pay the undisputed charges to BellSouth. In staff's May 24, 2000, letter, Ms. Legare was also notified that her service could be interrupted again if she did not make payment of the outstanding amount or make acceptable payment arrangements. Ms. Legare maintained that she would not pay any of the charges until BellSouth issued a credit to her account. BellSouth contended that proper notices were provided to the customer before her services were interrupted for nonpayment on telephone numbers 561-575-0662-647, 561-743-9774, 561-743-2366, and 561-747-9187. BellSouth stated that as of September 2000, the outstanding balance on 561-575-0662-647 was \$1,084.85, and \$865.50 for Ms. Legare's residential telephone numbers, which were billed under the main telephone number 561-743-9774.

Based on the foregoing, it appears that BellSouth complied with Commission rules in disconnecting Ms. Legare's service. As such, staff believes the Commission should find that BellSouth properly disconnected Ms. Legare's service when Ms. Legare failed to render payment for the undisputed charges.

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ISSUE 4: Should this docket be closed?

STAFF RECOMMENDATION: The Order issued from this recommendation will become final upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. The docket should then be closed upon issuance of a Consummating Order. (BANKS)

STAFF ANALYSIS: Whether staff's recommendation is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the Proposed Agency Action Order is filed within 21 days of the date of issuance of the Order, this docket should be closed upon issuance of a Consummating Order.