

REQUEST TO ESTABLISH DOCKET

(PLEASE TYPE)

Date 10/14/02

Docket No. 021056-TJ

- 1. Division Name/Staff Name Patricia A. Christensen, GCL
2. OPR Patricia Christensen
3. OCR John Plescow - CCA; Ray Kennedy - CMP
4. Suggested Docket Title Complaint of Timothy McGibbons against AT&T for improper billing of international toll charges incurred via internet use.

- 5. Suggested Docket Mailing List (attach separate sheet if necessary)
A. Provide NAMES OR ACRONYMS ONLY if a regulated company.
B. Provide COMPLETE NAME AND ADDRESS for all others. (Match representatives to companies.)
1. Parties and their representatives (if any):

Table with 2 columns and 2 rows. Row 1: Michael B. Twomey, Esquire (Attorney for Mr. Mc Gibbon) vs Timothy N. McGibbons. Row 2: AT&T vs (empty).

- 2. Interested persons and their representatives (if any):

Blank lines for listing interested persons and their representatives.

- 6. Check one:
[X] Documentation is attached.
[ ] Documentation will be provided with recommendation.

Request No. 368480T Name TIMOTHY N MCGIBBON

Business Name THE FLORIDA LOTTERY

ORIGINAL

Consumer Information

Name: TIMOTHY N MCGIBBON

Business Name: THE FLORIDA LOTTERY

Svc Address: 3405 SHARER ROAD

Phone: (850)-487-7777

Can Be Reached: (850)-487-7777

City/zip: Tallahassee / 32312-

Date Transferred to BCO: 08/05/2002

Date Received by BCO: 08/05/2002

Suspense Date: 06/23/2002

Utility Information

Company Code: TI741

Company: AT&T COMMUNICATIONS OF THE

Attn. REGULATORY CONTACT368480T

\*\*\*PLEASE READ BELOW FOR A SUPPLEMENTAL REPORT REQUEST DUE ON OR BEFORE JULY 13, 2001\*\*\*

Please review the "incorporated" Internet correspondence, located between the quotation marks on this form, in which the customer reports the following:

"recipient: CONTACT@PSC.STATE.FL.US  
return-email: CONTACT@PSC.STATE.FL.US  
return-name: Consumer  
subject: Telecommunications Improper Billing Complaint Form

Account Holder: The Florida Lottery  
Service Address: 250 Marriott Drive  
City, State and Zip Code: Tallahassee, FL 32399-6573

Sent to Agenda:

Conf. Agenda Date: / /

Form X Date Sent: 07/01/2002

Form X Date Due: 07/17/2002

Form X Received Late: N

Florida Public Service  
Commission - Consumer Request  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
850-413-6100

Mediation Settlement Deadline: / /

Mediation Analyst:

Pre. Conf. Settl. Amount: 0.00

Pre. Conf. Settlement:

Informal Conference Deadline: / /

Informal Conf. Sch.: Conference Analyst: JOHN PLESCOW

Date of Informal Conference: / / Informal Conf. Settlement:

Informal Conf. Settl. Amount: 0.00

Informal Conf. Resolve: Conf. Closed Date: / /

Post Conf. Settl. Amount: 0.00

Post Conf. Settlement:

ORIGINAL

DOCUMENT NUMBER-DATE

11247 OCT 16 20

FPSC-COMMISSION CLERK

Request No. 368480T Name TIMOTHY N MCGIBBON Business Name THE FLORIDA LOTTERY

County: Leon

Mailing Address: Timothy N. McGibbon, 3405 Sharer Road

Mailing City, State and Zip Code: Tallahassee, Fl 32312

E-mail Address: mcgibbon@talstar.com

Telephone Number at the Service Address: 487-7777, ext. 2035

Daytime Contact Telephone Number=

Utility's Name: AT&T Communications

Account Number: 0199511131001

Contacted company in dispute: YES

Name of contact: Rhonda Merritt, Claudia Devant-DeLoach, Andrew L. Schlafly

Date of contact: period of months over last five

Comments: First, this informal complaint is being filed by attorney Michael B. Twomey, P.O. Box 5256, Tallahassee, Fl 32314-5256, 850-421-9530,

email address: miketwomey@talstar.com on behalf of Timothy N. McGibbon,

a Lottery employee, who is the "real party in interest" in this complaint, but not the official holder of the AT&T service or account number in question. Mr. McGibbon is the real party in interest because the Florida Lottery will force him to reimburse the Lottery for any monies the Lottery, in turn, is compelled to pay to AT&T in relation to these demanded tolls. As is explained below, the tolls were inadvertently incurred and not knowingly incurred, because of "cyber dial attack" deceit by an internet criminal, by Mr. McGibbon's minor, 13-year old son. We believe, but are not certain, that the Lottery will also file an informal complaint by the internet. A formal complaint and demand for public hearing will be filed in the event the informal process does not succeed in convincing AT&T to waive the charges.

Please contact AT&T and request that it cease in its threats to disconnect the Florida Lottery's service on this account and to desist in its demands for payment pending the resolution of this complaint.

Thank you,

Michael B. Twomey

850-421-9530

Description of improper billing:

This line was improperly billed for in excess of \$3,700 in international toll charges by AT&T for "calls" allegedly made to the Nation of Madagascar at a billing rate of \$3.99 per minute. No employee or agent of the Florida Lottery, or any other person for that matter, knowingly made or executed calls to the number in question or was even aware of the number or the potential of any toll call being dialed. Rather, it appears that the minor son of a Lottery employee utilizing the line in question (which was sited at the father's residence for Lottery business purposes) was deceived by an international pornographer into making a selection on his computer screen, which selection, unbeknownst to the minor child, caused his computer modem to disconnect from the local internet service provider and then, again without his knowledge, dial an international number whose per minute charges are some of the highest in the world. At no time was

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Request No. 368480T

Name TIMOTHY N MCGIBBON

Business Name THE FLORIDA LOTTERY

AGE NO: 2

the minor child, his father or any employee of the Lottery aware that any toll call had been dialed by the computer and that any toll charges were being incurred, let alone at the unconscionable rate of \$3.99 per minute.

The minor child had no reason to know that his computer had been disconnected from the ISP, which was a local, no toll call and no reasonable amount of care from this child or any other person merely using a computer on the Internet would have made him aware of the intentional deceit being exercised so that he would have been knowledgeable that the toll call was being placed.

The type of deceit worked on this child for which the Lottery is expected to reimburse AT&T, so that the pornographer, in turn, can take its cut, has been recognized by the National Association of Regulatory Utility Commissioners as a "Cyber Dialer Attack." The call was placed through deceit and the charges should be forgiven with the caveat that the Lottery place a block on this line precluding any future international calls."

Note-- The Florida Lottery appears to be the customer of record.

Please investigate this issue, contact the customer and provide the Commission with a detailed written report that addresses the issues in the correspondence, and confirms the customer has been contacted either by letter or phone.

\*\*Inquiry taken by A. Hashisho\*\*

CONTACT NUMBERS

CAF FAX: 850/413-7168

CAF Email: pscreply@psc.state.fl.us

ORIGINAL

March 16, 2001: I have received an e-mail from the Bureau Chief, Leroy Rasberry instructing that this case be turned into a "Public Official" case. An e-mail will be forwarded to Paul Lowery requesting this case be reassigned to senior analyst Kate Smith for its handling. Carmen Peña - Supervisor Case Resolution & Analysis

3/19/2001 Case reassigned to K.Smith. P.Lowery

March 27, 2001: Mr. Twomey called for a status report.. I returned his call. He was not available so I left a message stating that the report has not yet arrived and wasn't due until 4/5/01. I left my name and telephone number for his use. \_\_Kate

March 27, 2001: Mr. Twomey returned my call. He explained that he wanted to be clear that he was representing only the McGibbons and not the FL Lottery. I assured him that I understood that. He then went on to explain that the McGibbon's 13-year-old son was exploring adult sites on the Internet when he came upon one that alleged to be free -- no credit card required. The son clicked on the site. A mole program then took over the computer allowing the call to be placed to Madagascar at the rate of \$3.99 a minute. It appears that this program is transparent to the user and the son had no knowledge that the calls were incurring any cost. He believed he was sill with his local ISP at no cost. \_\_Kate

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03/29/2001 Report received via email. AHashisho AT&T reported that the Florida Lottery is the customer of record and AT&T cannot give specifics of its investigation to Mr. McGibbons. However, the company is sustaining the charges as service rendered in good faith. It states that to ask the company to adsorb the costs would be unfair. It already paid the pornographer and would lose money. It did offer to waive half the costs, but the customer declined. It appears that the customer does not feel responsible for any of the costs. \_\_Kate

April 2, 2001: I called Noreen Davis to ask whether or not this case would come under the 900 Rule. Specifically, I wondered whether or not AT&T had to waive the charges the first time there is a protest. The problem may be that the Lottery is the customer and it has not filed a complaint. \_\_Kate

April 2, 2001: Mike Twomey called. He received a copy of the company's report. He wanted to point out that the report said the customer's son used a telephone. This is not correct. The son used a computer. I discussed with him that I was asking an opinion from Noreen Davis. I will advise him when I get more information. We discussed the informal conference procedure. \_\_Kate

April 6, 2001: Ms. Davis called and said that Beth Keating would be calling me about my question on this case.

April 10, 2001: I spoke with Ms. Keating. She advised that because the calls were made via a computer, we could not invoke our pay-per-call rules. She will check with Ray Kennedy to see if NARUC has come out with its opinion on cyber dialing. I will call Sprint to see if I can find out the number that was dialed and whether or not it was a 900# or ddd. \_\_Kate

I called Sprint and spoke with Wanda. She advised me that due to the size of the account and the fact that it is a MAJOR account for the state of Florida, she was unable to look at it. She could not tell me anything about how the call was dialed or any details at all. \_\_Kate

I called Mike Twomey's office and left a message asking for a copy of the customer's bill or anything that would show me how the call was dialed. \_\_Kate

I called the customer and asked for the number dialed, but he did not have it. He gave a copy of the bill to Mr. Twomey. I told the customer I'd called Mr. Twomey and would wait to see what he faxed me. \_\_Kate

April 26, 2001: I discussed this case with Carmen Peña. We decided that we needed a legal opinion. Ms. Peña is requesting same from Legal. \_\_Kate

April 27, 2001: Sent message to Legal asking for an opinion on this case. It appears that AT&T issued full credit to another customer, Mr. Pascarella, case no. 322076T, on the same type of call. \_\_Kate

May 4, 2001: Mr. Twomey came into my office and asked about the status of the case. I explained that we had requested

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assistance from legal. He asked for and was given a copy of the file. \_\_Kate

June 5, 2001: NOTE TO COMPANY: After reviewing this case and two others (322076T - Pascarella, Gene; and 379615T Davidson, Jody), we believe that AT&T should credit the calls made on this line one time as it did in the two previous cases. It appears that the company is treating these cases as though they were 900 calls and issues a credit for the first billing. Please issue full credit to Mr. McGibbons as you did for Mr. Pascarella and Ms. Davidson. Please send a supplemental report by June 19, 2001 showing the amount of the credit issued. Please refer to Florida statutes 364.09, which prohibits treating customers differently.

June 21, 2001: Discussed with my supervisor. Waiting for company's supplemental report. It was due June 19, 2001 and has not yet been received.\_\_Kate

NOTE TO COMPANY: WE HAVE NOT YET RECEIVED THE ABOVE-REQUESTED SUPPLEMENTAL REPORT. PLEASE SEND IT BY JUNE 25, 2001.\_\_Kate

July 3, 2001: Division Director, Bev DeMello has e-mailed me requesting an entire copy of the file. Bureau Chief, Leroy Rasberry e-mailed her indicating that "AT&T has missed the due date for the supplemental response, which was due June 19, and then June 25, 2001". A copy of the updated file has been forwarded to Ms. DeMello. Carmen Peña

07/10/01 PLEASE SEND SUPPLEMENTAL RESPONSE PLEASE SEND ON OR BEFORE JULY 13, 2001

\* It appears that similar cases filed with AT&T have been closed with full credit issuance. Please read the notes From April 27 to current.

\* Please reconsider credit issuance on this case.

• Provide your supplemental to the attention of c. broome

ORIGINAL

resending to the company at 1:58 pm

07/12 1:29 pm, Bev and Leroy called Shirley Mock, AT&T contact, at 425-6313, SMock@oga.att.com, or fax to 425-6361, (faxing a copy of this form). LRasberry

07/13/2001 Interim Report received via email. Company states that it will provide a full report within 10 days. AHashisho

07/16/01 Bev DeMello spoke with Vince Appruzzese, and agreed to fax a copy of this entire CATS file directly to him at 404-877-7690. Vince agreed to speak with his attorneys since this is a policy decision, and get back in touch with Bev. LRasberry

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PAGE NO: 5

07/20/2001 Report received via email. AHashisho

07/23/2001 Report received via email. AHashisho

07/23/2001: Company's supplemental response indicates that AT&T has spoken to the customer on 7/12/01 and all charges were sustained. RRoland

07/24 Received a letter from Mike Twomey. The letter requested the commission to order AT&T to desist any efforts to collect the disputed tolls pending resolution of this complaint.

07/25/01 Bev DeMello called to confirm that the 7/23 contact is the final report from AT&T. The letter from Mike Twomey was faxed to AT&T (Shirley Mock, 425-6313). LRasberry

07/26/2001: Bev DeMello delivered a copy of this case file to the General Counsel, Harold McLean, for review. Original located in pending file. RRoland

8/27/01 Patricia Christiansen, PSC legal called to inform Bev DeMello, that PSC legal, (working with Rick Mose' group) sent data requests to AT&T about how their system works. They expect to hear from them by August 31, 2001, afterwards they will determine whether an informal conference is necessary. Notes entered by LRasberry.

09/21/2001: Received e-mail from AT&T requesting a copy of billing statement with disputed charges. Faxed copy of billing statement to AT&T, Attn Mr. Eddie Couch (Fax 404-877-7671). RRoland

3/18/01 The following emails were exchanged between PSC staff:

"-----Original Message-----

From: Bev DeMello  
Sent: Monday, March 18, 2002 8:11 AM  
To: Harold McLean  
Cc: Leroy Rasberry  
Subject: RE: Timothy McGibbon - 368480T

Sounds good. Let us know when it's convenient. Bev.

-----Original Message-----

From: Harold McLean  
Sent: Monday, March 18, 2002 8:07 AM  
To: Bev DeMello  
Cc: Patty Christensen

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Subject: RE: Timothy McGibbon - 368480T

It's my position that the complainant is not the customer and lacks standing to bring a complaint; in addition, I doubt we have jurisdiction over the subject matter of the complaint. I assigned Patty Christensen quite a while ago.

Perhaps a meeting among Patty, myself and your division would be wise.

-----Original Message-----

From: Bev DeMello  
Sent: Sunday, March 17, 2002 7:08 AM  
To: Harold McLean  
Cc: Veronica Washington  
Subject: RE: Timothy McGibbon - 368480T

Harold--I answered you in a previous e-mail. Have you made any determinations on this case? Bev.

-----Original Message-----

From: Harold McLean  
Sent: Monday, March 04, 2002 2:40 PM  
To: Bev DeMello  
Subject: RE: Timothy McGibbon - 368480T

Do we have a pending complaint?

-----Original Message-----

From: Bev DeMello  
Sent: Monday, March 04, 2002 2:29 PM  
To: Harold McLean  
Cc: Veronica Washington  
Subject: RE: Timothy McGibbon - 368480T

I talked to Patti Christiansen, who said the matter is still up for review by you. Is it in your "tickler" file?  
Thanks. Bev.

-----Original Message-----

From: Leroy Rasberry  
Sent: Wednesday, February 27, 2002 10:56 AM  
To: Bev DeMello  
Cc: Randy Roland; Pamela Johnson; Leroy Rasberry  
Subject: RE: Timothy McGibbon - 368480T

2/27/02

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Bev,

This is the Twomey case.

We have not heard from legal. Below is the last note placed in CATS:

"8/27/01 Patricia Christiansen, PSC legal called to inform Bev DeMello, that PSC legal, (working with Rick Mose' group) sent data requests to AT&T about how their system works. They expect to hear from them by August 31, 2001, afterwards they will determine whether an informal conference is necessary. Notes entered by LRasberry.

09/21/2001: Received e-mail from AT&T requesting a copy of billing statement with disputed charges. Faxed copy of billing statement to AT&T, Attn Mr. Eddie Couch (Fax 404-877-7671). RRoland"

Can you check with Harold on the status?

Thanks

-----Original Message-----

From: Randy Roland

Sent: Wednesday, February 27, 2002 10:49 AM

To: Leroy Rasberry

Cc: Pamela Johnson

Subject: Timothy McGibbon - 368480T

PSC legal was involved with this inquiry. The comments in CATs show that legal was working with Rick Moses on this. I believe we need someone in legal to provide the status and/or final resolution on this inquiry.

Notes added by LRasberry

05/17/02: Inquiry closed via letter from Office of the General Counsel (Patricia Christensen). The letter advises Mr. Twomey that since the account holder in this matter is the Florida State Lottery. As such, Mr. McGibbon does not have standing to file this complaint since he is not the account holder and was not filing the complaint on behalf of the Lottery but rather himself personally. The letter further advises the complaint does not involve intrastate charges, but rather only international charges. In staff's opinion, the FCC is the appropriate agency to address any complaints regarding improperly billed international calls. The letter included informal conference language and advises Mr. Twomey to contact Ms. Christensen if he has any questions. Closed. RRoland

June 19, 2002: Director DeMello forwarded us Mr. McGibbon's request for an informal conference via his legal representative, Michael B. Twomey. An e-mail was forwarded to Pam Johnson at approximately 4:27 p.m. requesting the original file be forwarded to BCO's informal conference team. A second e-mail was forwarded to Attorney Pat Christensen

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Request No. 368480T Name TIMOTHY N MCGIBBON Business Name THE FLORIDA LOTTERY

at the General Counsel's office requesting a copy of the close out letter she forwarded Attorney Twomey. I also informed her that an informal conference had been requested. At approximately 5:00 p.m. Director DeMello e-mailed me indicating that her suggestion is that the office of the General Counsel would be great to mediate this case. Copies of the three e-mails have been placed in the file for documentation purposes. Carmen Peña - Supervisor Bureau of Consumer Outreach.

June 20, 2002: I forwarded Director DeMello an e-mail in regards to this case. We met and it was decided that General Counsel's mediation team would be handling the informal conference. A copy of the e-mail has been included in the case file for documentation purposes. Carmen Peña - Supervisor Bureau of Consumer Outreach.

June 24, 2002: Director DeMello has forwarded me a copy of the e-mail she sent to General Counsel Harold McLean. Attorney McLean has indicated to Director DeMello that his mediation team would be handling this informal conference request. A copy of the e-mail has been placed in the file for documentation purposes. Carmen Peña - Supervisor Bureau of Consumer Outreach.

6/26/2002 Case copy forwarded to V.Apruzzese at (404) 877-7690. P.Lowery

July 1, 2002: An informal conference acknowledgment letter along with Form X will be forwarded to the attorney of the customer via certified and regular mail. The letter will be signed by CAF's Director Bev DeMello, but it will indicate that the informal conference will be held by General Counsel Harold McLean. Carmen Peña - Supervisor

08/01/02 Customer sent additional correspondence on this case. Correspondence was hand delivered to Harold McLean by Bev DeMello. LRasberry

08/05/02 The 08/01 correspondence is considered a request for an informal conference. The request and the entire file hand delivered to Carmen Pena. LRasberry.

August 5, 2002: Per directive of the Legal Division, BCO will be handling the informal conference of the customer, not the General Counsel's office. Attached is an e-mail from Attorney Patty Christensen addressed to General Counsel Harold McLean and copied to CAF's Division Director Bev DeMello and Carmen Peña.

John Plescow will be handling the informal conference stage of the process. He will contact the parties and schedule the conference via telephone. A letter will be written to the customer with a copy to AT&T, indicating the date and time of the conference. The designated attorney from General Counsel's office attending the conference will be Patty Christensen. An e-mail has been forwarded to John Plescow today in regards to this matter. Carmen Peña - Supervisor Bureau of Consumer Outreach

08-07-2002 - I called the customer's lawyer at (850)421-9530. An informal conference will be scheduled for 08-29-2002. It will be held by telephone. Mr. Twomey, the customer's lawyer, is not planing to have his client attend the

Request No. 368480T

Name TIMOTHY N MCGIBBON

Business Name ORIGINA



the file. Carmen Peña - Supervisor Bureau of Consumer Outreach

August 15, 2002: John Plescow has informed me that attorney Michael Twomey cannot be available for the informal conference on the agreed time of 9:30 a.m. He has requested a change in the start time. It has been agreed that the informal conference will start at 1:30 p.m. We will notify the company of the time change. Carmen Peña - Supervisor Bureau of Consumer Outreach

August 19, 2002: At approximately 10:43 a.m. I forwarded Bureau Chief Rhonda Hicks an e-mail providing her with information about this informal conference. A copy of the e-mail has been included in the case file for documentation purposes. The assigned attorney from the General Counsel's office is Patty Christensen. Carmen Peña - Supervisor

08-19-2002 - The following information was sent by email today.  
John,

Please contact "Vince Apruzzese", AT&T National Complaints Escalations Manager for the Eastern Region. Vince can be reached on the 29th at 1:00pm for the audio conference with the Commission and the Customer. Vince's number is 404-810-7623. Please contact me if there are any additional questions.

Eddie  
/JPlescow

August 28, 2002: I received an e-mail from John Plescow at approximately 1:08 p.m. with a concern he had regarding the assigned attorney to this case. It appears that attorney Patty Christensen is out all week and will not be able to attend tomorrow's informal conference. This information was given to John by another attorney from General Counsel's office. At 2:44 p.m. I e-mailed our Division Director Bev DeMello to inform her of BCO's concern of not having an attorney present at the scheduled informal conference. I also stated the concern that John Plescow was the only person in the Informal Conference Team that can participate at the informal conference because Kate Smith and Carmen Peña have dealt with this case in its proposed resolution stage. In addition I stated that the fourth member of the BCO Informal Conference Team, Noelia Santiago had a doctor's appointment and would not be attending. I suggested to her that it would be best that Bureau Chief Rhonda Hicks participate in this informal conference to assist John and handle the recording. A copy of the e-mail has been placed in the file for documentation purposes. Carmen Peña - Supervisor Bureau of Consumer Outreach

August 29, 2002: John Plescow informed me today that Bureau Chief Rhonda Hicks called him at approximately 4:50 p.m. yesterday to inform him that the alternate attorney assigned to this case is Jessica Elliott. John contacted Jessica to inform her of the informal conference time and place. A copy of the case file has been handed to the alternate attorney. Carmen Peña - Supervisor Bureau of Consumer Outreach

ORIGINAL

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Request No. 368480T Name TIMOTHY N MCGIBBON Business Name \_\_\_\_\_

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

STATE OF FLORIDA



DIVISION OF CONSUMER AFFAIRS  
BEVERLEE DEMELLO  
DIRECTOR  
(850) 413-6100  
TOLL FREE 1-800-342-3552

## Public Service Commission

August 14, 2002

### Certified & Regular Mail

Attorney Michael B. Twomey  
P.O. Box 5256  
Tallahassee, FL 32314-5256

**Re: Informal Conference Request  
PSC Inquiry No. 368480T  
Timothy McGibbon vs AT&T**

Dear Mr. Twomey:

Thank you for contacting the Florida Public Service Commission (PSC) about AT&T. It appears that we have been unable to resolve this case through the mediation process. Therefore, we are moving to the next step in the informal conference process. Your informal conference will be held by telephone on **August 29, 2002 at 9:30 a.m.**

On the day of the conference, we will meet in room 136 of the Betty Easley Conference Center. When we are all ready, we will call AT&T and begin the Informal Conference.

We wish to emphasize that this process is informal and the PSC's staff will only act as a mediator to the discussion. We hope that both sides will participate fully and reach a fair settlement. Both parties have a chance to participate in the decision and outcome of the complaint. We have provided a Settlement Agreement form to the company.

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CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0862

An Affirmative Action/Equal Opportunity Employer

PSC Website: <http://www.floridapsc.com>

Internet E-mail: [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us)

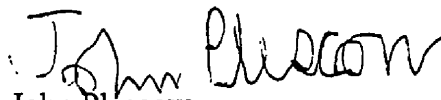
Attorney Michael B. Twomey

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August 14, 2002

If, however, a settlement is not reached, our staff will prepare a recommendation to the Commissioners on how the matter should be resolved. Please remember that the PSC must base its decision in this matter on Florida's rules and statutes. Also, the parties may incur additional expenses in attending an agenda conference to defend their side of the case.

Sincerely,



John Plescow  
Regulatory Consultant  
Bureau of Consumer Outreach

c: AT&T

ORIGINAL

Aug-14-02 09:17 AM

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<u>Identification</u>	<u>Result</u>	<u>Pages</u>	<u>Type</u>	<u>Date</u>	<u>Time</u>	<u>Duration</u>	<u>Diagnostic</u>
18002847525	OK	03	Sent	Aug-14	09:16A	00:00:55	002482030022

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August 14 2002, 09:03 AM

**STATE OF FLORIDA**



**PUBLIC SERVICE COMMISSION**

**2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FL 32399-0850**

**TO:**

AT&T

61-800-284-7525

**FROM:**

John Plescow/Carmen Pena

Voice: 850-413-6119/850-413-6109

Fax: 850-413-6362

**RE:**

Informal Conference Request FPSC  
Inquiry No. 368480T

**Notes:**

Attention: Lisa A. Riley/Regulatory Contact

This is an acknowledgement letter regarding Informal Conference Request FPSC Inquiry No. 368480T vs AT&T.

Note: Total pages 3 including cover sheet

Thanks.

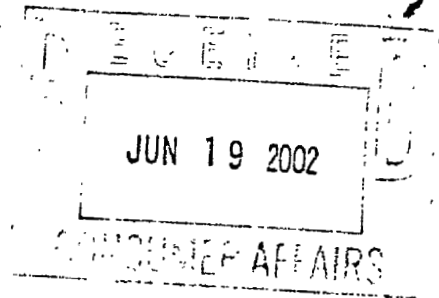


**MICHAEL B. TWOMEY**

ATTORNEY AT LAW  
POST OFFICE BOX 5256  
TALLAHASSEE, FLORIDA 32314-5256  
Tel. (850) 421-9530 Fax. (850) 421-8543  
e-mail: [miketwomey@falstar.com](mailto:miketwomey@falstar.com)

June 19, 2002

Beverlee DeMello  
Director, Division of Consumer Affairs  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850



Re: Request for Informal Conference - Complaint No. 368480-T,  
Complaint of Timothy McGibbon against AT&T

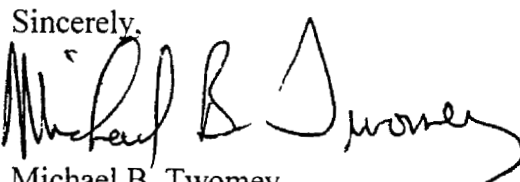
Dear Ms. DeMello:

**ORIGINAL**

On May 20, 2002, Senior Attorney Patricia A. Christensen sent me a letter in this complaint proceeding in which she advised me of the Commission Staff's intention to close the McGibbon complaint against AT&T for the reasons therein. She closed by advising that Mr. McGibbon could seek an informal conference, pursuant to Rule 25-22.032(8), F.A.C., if he disagreed with the Staff's proposed resolution.

Mr. McGibbon does disagree with the Staff's proposed resolution of dismissing his complaint and by this letter requests that you assign a Staff member to process the informal conference as is allowed by Rule 25-22.032(8)(b), F.A.C. My understanding of the rule is that Mr. McGibbon will have 15 days from today's date in which to complete PSC/CAF Form X, which he will do in a timely manner.

Thank you for the assistance of your division to date in this matter and please contact me immediately if you have any questions.

Sincerely,  
  
Michael B. Twomey  
Attorney for Timothy McGibbon

cc: Timothy McGibbon  
Patricia A. Christensen, Esquire  
AT&T, Law and Government Affairs - Southern Region, Atlanta  
Claudia Davant, Esquire, President AT&T-Florida

**MICHAEL B. TWOMEY**  
ATTORNEY AT LAW  
POST OFFICE BOX 5256  
TALLAHASSEE, FLORIDA 32314-5256  
Tel. (850) 421-9530 Fax. (850) 421-8543  
e-mail: [miketwomey@talstar.com](mailto:miketwomey@talstar.com)

July 17, 2002

Beverlee S. DeMello  
Director  
Division of Consumer Affairs  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0862

Re: Informal Conference Request, Tim McGibbon v. AT&T, Complaint No. 368480T

Dear Ms. DeMello:

In response to your letter to me of July 1, 2002 informing that Mr. McGibbon had until July 17, 2002 to request an informal hearing, the following information required by PSC/CAF Form X is provided:

Identify the issues to be resolved:

The issue to be resolved is whether the Florida Lottery and, thus, Mr. McGibbon, should be required to pay to AT&T international "premium" toll charges to the island of Madagascar at the rate of \$3.99 per minute and totaling some \$3,700, which charges were incurred on a Lottery Department line located at Mr. McGibbon's residence, for the Lottery's purposes, and subscribed to AT&T for toll services. More specifically, Mr. McGibbon's then 13 year old son, while on summer vacation from school, used a computer attached to the Lottery Department phone line to "surf the Web" through the use of the McGibbon family's internet service provider (ISP). The telephone number for the ISP was a local call, thus, there was no expectation that any telephone toll charges should be incurred.

The minor son, while apparently looking for "adult content," located a website URL titled "www.nocreditcard.com" This site, which is still in existence, although with somewhat improved public disclosures as to the phone charges to be incurred as compared to two years ago, promises hardcore pornography and "extra stuff," all without the use of a credit card. Intending to visit this site and without the requirement of a credit card (obviously meaning to him no charges at all that would link him to a porn site), the McGibbon minor clicked on a number of dialogue boxes necessary to access the site's content. Unbeknownst to him, one of the dialogue boxes had a "hidden" announcement that clicking the next step would download a "dialer" program, then disconnect the user's computer from the local call ISP and then dial an international toll call at a \$3.99 per minute rate. This "disclosure" was "hidden" in the sense that it was included in small print and four or five pages down on a scroll down message. The notification of disconnection from the ISP and the imposition of toll charges were not visible in first "page" of the scroll down screen. More importantly, the scroll down screen had the "look" of the typical license you are forced to agree with on software you purchase and install and which the vast majority of people probably

never read before "agreeing." The McGibbon minor didn't read the warning and merely clicked that he was 18, as was required, and clicked the "I agree" dialogue box. That action surreptitiously down loaded an automatic dialer program, which was initiated by another dialogue box that appeared on the computer monitor screen and promised the pornographic images.

The actions taken by the McGibbon minor resulted in the pornographer's dialer program automatically disconnecting the child's computer from the local call ISP and, in turn, dialing a number in Madagascar through the utilization of an international toll number provided by AT&T and billed at the rate of \$3.99 per minute. It should be noted that the computer user was suppose to select his home nation (the default was the U.S.), the purpose of which was to ensure that an international call was always placed and charged. So, for example, if one selected the home nation of Madagascar, thinking that the porn servers were located there, the dialer program would initiate a modem call to yet another nation so that a \$3.99 per minute toll call would result.

This deceitful action by the pornographers was precisely the type objected to by the National Association of Regulatory Utility Commissioners (NARUC) in its February 28, 2001 Resolution for the Prevention of CYBER DIALER ATTACKS, a copy of which is attached, and which was explained in a NARUC Issue Paper titled CYBER DIALER ATTACKS, a copy of which is also attached. The NARUC made a number of suggested changes to lessen the billings for these type calls, none of which were apparently acted on by either the FCC or the long distance carriers.

It is clear from the series of FTC v. Verity International, Ltd. cases that AT&T knew or should have known by March or April, 2002 that a number of pornographer/content providers were utilizing its ANI billing identification services and high rate per minute international tariffs to Madagascar and other remote islands in order to transmit videotext service, not voice. Furthermore, AT&T would have known by the time the McGibbon minor's charges were recorded on the Lottery Department's line that the toll number in question, amongst others, was being used for videotext pornography content, and in connection with the clearly fraudulent, so-called Cyber Dialer Attacks by virtue of the volume of customer service complaints it was then receiving and the volume of charge backs it was having to make in connection with them.

Telephone subscribers are liable for any telephone calls made on their lines, regardless of who made or authorized them, but they are not liable for unauthorized use of those lines for videotext services. Despite this axiom and despite AT&T's knowledge that the tolls were incurred without the Lottery Department's authorization and were for videotext, AT&T has persisted in demanding that the Lottery Department pay the billing in full, with full knowledge that the Lottery is not legally liable to pay for the tolls. These demands persist despite the fact that AT&T also knows the toll numbers were engaged under circumstances that were deceptive, at best, if not outright fraudulent and were for content that was illegal for a minor to receive within the State of Florida.

The fact that AT&T has filed tariffs for Madagascar at the \$3.99 per minute rate, when voice service to that nation can now be had for as little as 40 to 50 cents per minute, should be indicative of what it is both promoting and enabling. The \$3.99 tariff is neither remotely cost-based, nor, as AT&T will probably point out, must it be. Nonetheless, having tariffs at such high cost per minute levels allows the pornographers to realize huge revenues, even after AT&T takes its huge cut of the tariff revenues. If not obvious yet, one should recognize that scams of the type associated with the calls in this case could not exist, or even begin to exist, if it were not for the

complicity of AT&T in filing the high rate tariffs and then offering the billing and collection services to the perpetrators.

The issue to be resolved is whether AT&T has the legally authority to require the Lottery Department to pay for the over \$3,700 of international toll charges that resulted from videotext services, which were incurred through the unauthorized use of its lines for that purpose, irrespective of whether or not the McGibbon minor was aware that the charges were being incurred, but especially if he were not, as is the case.

Facts that are in dispute

Whether the services for which the Lottery Department has been billed over \$3,700 by AT&T were videotext or voice?

Whether the program that caused the minor McGibbon child to down load the modem dialer program was deceptive and/or fraudulent and whether he knew he was leaving the Internet?

Whether AT&T had prior knowledge that the Madagascar numbers in question were being used for videotext services?

Whether AT&T had prior knowledge from its customer service operations and charge back volumes to the numbers in Madagascar that the toll charges were not only videotext related, but made in connection with pornographic content and dialed through the use of deceptive "cyber dialer attack" dialer programs?

The dollar amount in dispute

The dollar amount in dispute is in excess of \$3,700 billed to the Florida Lottery by AT&T.

Suggested resolution or the relief sought

The relief sought is an order or other communication from this Commission to AT&T requiring it to waive the tolls sought to be collected in connection with these Cyber Dialer Attack calls made for videotext services.

Thank you again for the assistance provided by your division. If you have any questions regarding this request, please contact me immediately.

Sincerely,



Michael B. Twomey

cc: Tim McGibbon  
AT&T  
Florida Attorney General  
Public Counsel

Jul-17-02 03:42 PM

---

<u>Identification</u>	<u>Result</u>	<u>Pages</u>	<u>Type</u>	<u>Date</u>	<u>Time</u>	<u>Duration</u>	<u>Diagnostic</u>
4218543	OK	03	Sent	Jul-17	03:41P	00:01:04	002582030022

---

Faxed 7/17/02  
421-8543 (F)  
421-9830 (F)

July 17 2002, 03:38 PM

**STATE OF FLORIDA**



**PUBLIC SERVICE COMMISSION**

**2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FL 32399-0850**

**TO:**

Michael B. Towmey

850-421-8543

**FROM:**

Pamela Johnson

Voice: 850-413-6459

Fax: 850-413-6362

**RE:**

Slamming Complaint

**Notes:**

Attention: Michael B. Towmey

Note: Total pages 3 including cover sheet

## Angie Hashisho

---

**From:** Interactive.Slamming.Form@webserv2.electro-net.com  
**Sent:** Thursday, March 15, 2001 3:57 PM  
**Subject:** Slamming Complaint

recipient: CONTACT@PSC.STATE.FL.US  
return-email: CONTACT@PSC.STATE.FL.US  
return-name: Consumer  
subject: Telecommunications Improper Billing Complaint Form  
Account Holder: The Florida Lottery  
Service Address: 250 Marriott Drive  
City, State and Zip Code: Tallahassee, Fl 32399-6573  
County: Leon  
Mailing Address: Timothy N. McGibbon, 3405 Sharer Road  
Mailing City, State and Zip Code: Tallahassee, Fl 32312  
E-mail Address: mcgibbon@talstar.com  
Telephone Number at the Service Address: 487-7777, ext. 2035  
Daytime Contact Telephone Number=  
Utility's Name: AT&T Communications  
Account Number: 0199511131001  
Contacted company in dispute: YES  
name of contact: Rhonda Merritt, Claudia Devant-Deloach, Andrew L. Schlafly  
date of contact: period of months over last five  
comments: First, this informal complaint is being filed by attorney Michael B. Twomey, P.O. Box 5256, Tallahassee, Fl 32314-5256, 850-421-9530, email address: miketwomey@talstar.com on behalf of Timothy N. McGibbon, a Lottery employee, who is the "real party in interest" in this complaint, but not the official holder of the AT&T service or account number in question. Mr. McGibbon is the real party in interest because the Florida Lottery will force him to reimburse the Lottery for any monies the Lottery, in turn, is compelled to pay to AT&T in relation to these demanded tolls. As is explained below, the tolls were inadvertently incurred and not knowingly incurred, because of "cyber dial attack" deceit by an internet criminal, by Mr. McGibbon's minor, 13-year old son. We believe, but are not certain, that the Lottery will also file an informal complaint by the internet. A formal complaint and demand for public hearing will be filed in the event the informal process does not succeed in convincing AT&T to waive the charges.

Please contact AT&T and request that it cease in its threats to disconnect the Florida Lottery's service on this account and to desist in its demands for payment pending the resolution of this complaint.

Thank you,

Michael B. Twomey  
850-421-9530

### Description of improper billing:

This line was improperly billed for in excess of \$3,700 in international toll charges by AT&T for "calls" allegedly made to the Nation of Madagascar at a billing rate of \$3.99 per minute. No employee or agent of the Florida Lottery, or any other person for that matter, knowingly made or executed calls to the number in question or was even aware of the number or the potential of any toll call being dialed. Rather, it appears that the minor son of a Lottery employee utilizing the line in question (which was sited at the father's residence for Lottery business purposes) was deceived by an international pornographer into making a selection on his computer screen, which selection, unbeknownst to the minor child, caused his computer modem to disconnect from the local internet service provider and then, again without his knowledge, dial an international number whose per minute charges are some of the highest in the world. At no time was the minor child, his father or any employee of the Lottery aware that any toll call had been dialed by the computer and that any toll charges were being incurred, let alone

at the unconscionable rate of \$3.99 per minute.

The minor child had no reason to know that his computer had been disconnected from the ISP, which was a local, no toll call and no reasonable amount of care from this child or any other person merely using a computer on the Internet would have made him aware of the intentional deceit being exercised so that he would have been knowledgeable that the toll call was being placed.

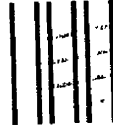
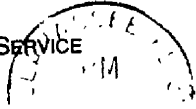
The type of deceit worked on this child for which the Lottery is expected to reimburse AT&T, so that the pornographer, in turn, can take its cut, has been recognized by the National Association of Regulatory Utility Commissioners as a "Cyber Dialer Attack." The call was placed through deceit and the charges should be forgiven with the caveat that the Lottery place a block on this line precluding any future international calls.



CASE #: 368480T

Jurony  
Mc Gibbon

UNITED STATES POSTAL SERVICE

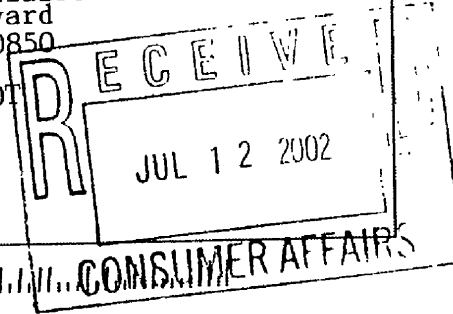


First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

Beverlee S. DeMello, Director  
Florida Public Service Commission  
Division of Consumer Affairs  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

FPSC Inquiry No. 368480T  
FPSC Form X



0850+0850



CONSUMER AFFAIRS

ORIGINAL

Attorney  
Michael  
Jwomey  
(Legal Rep  
of Customer)

Vs. AT&T

Received July 12, 2002

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

STATE OF FLORIDA



DIVISION OF CONSUMER AFFAIRS  
BEVERLEE DEMELLO  
DIRECTOR  
(850) 413-6100  
TOLL FREE 1-800-342-3552

## Public Service Commission

July 1, 2002

*Certified and Regular Mail*

Michael Twomey, Esquire  
P. O. Box 5256  
Tallahassee, FL 32314-5256

**Re: Informal Conference Request  
Mr. Timothy McGibbon vs AT&T  
PSC Inquiry No. 368480T**

ORIGINAL

Dear Mr. Twomey:

Thank you for contacting the Florida Public Service Commission (PSC) on behalf of your client, Timothy McGibbon. Mr. McGibbon has a concern involving AT&T Communications of the Southern States, LLC. We appreciate the opportunity to help you.

In accordance with Commission Rule 25-22.032(8), Florida Administrative Code, you must complete the attached PSC/CAF Form X, and return it to the Commission within 15 days from the date of this letter. Please be sure to address your letter and Form X to the Office of the General Counsel. **If the completed Form X is not postmarked by July 17, 2002, which is 15 days from the date of this letter, your informal conference request will be denied.**

Staff in the General Counsel's Office will review your Form X and recommend if an informal conference should be granted. In the event that the conference is granted, the staff member will contact you.

If Staff finds that your case has no basis upon which relief may be granted, a recommendation will be made to the Commissioners to dismiss the complaint. You will be notified in writing about this decision.

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CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0862

An Affirmative Action/Equal Opportunity Employer

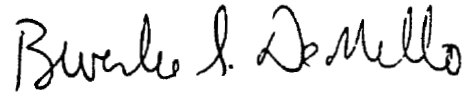
PSC Website: <http://www.floridapsc.com>

Internet E-mail: [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us)

Michael Twomey, Esquire  
Page 2  
July 1, 2002

I hope this information is helpful. If you have any questions, please contact the General Counsel's office at 1-850-413-6248.

Sincerely,



Beverlee S. DeMello, Director  
Division of Consumer Affairs

BSD:kes

Attachment

c: AT&T Communications of the Southern States, LLC.

ORIGINAL



FLORIDA PUBLIC SERVICE COMMISSION  
INFORMAL CONFERENCE REQUEST FORM

FPSC Complaint Number: 368480T  
Customer's Name: Mr. Timothy McGibbon  
Authorized Representative: Michael Twomey, Esquire  
Address: P. O. Box 5256  
Address: Tallahassee, FL 32314-5256  
Telephone Number (voice): 1-850-421-9530 (Fax):  
E-mail address (if any):

ORIGINAL

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*Please address the following statements using additional pages if necessary.*

Please identify the issues to be resolved. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please describe the facts that are in dispute. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please identify the dollar amount in dispute. \_\_\_\_\_

Please provide a suggested resolution or the relief sought. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICE:** This form must be postmarked by **July 17, 2002**. Failure to provide this information may result in denial of the informal conference request.

July 1 2002, 00:44 PM

STATE OF FLORIDA



PUBLIC SERVICE COMMISSION

2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FL 32399-0850

TO:

Michael Twomey, Esquire

850-421-8543

FROM:

Beverlee DeMello

Voice: 850-413-6107

Fax: 850-413-6362

RE:

Informal Conference Request Mr. Timothy  
McGibbon vs AT&T PSC Inquiry No. 368480T

Notes:

Attention: Michael Twomey

This is acknowledgement letter for FPSC Inquiry No. 368480T Informal Conference Request Mr. Timothy McGibbon vs AT&T with FPSC Form X included.

Note: Total pages 4 including cover sheet

Thanks.

STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY



DIVISION OF CONSUMER AFFAIRS  
BEVERLEE DEMELLO  
DIRECTOR  
(850) 413-6100  
TOLL FREE 1-800-342-3552

## Public Service Commission

July 1, 2002

*Certified and Regular Mail*

Michael Twomey, Esquire  
P. O. Box 5256  
Tallahassee, FL 32314-5256

**Re: Informal Conference Request  
Mr. Timothy McGibbon vs AT&T  
PSC Inquiry No. 368480T**

Dear Mr. Twomey:

Thank you for contacting the Florida Public Service Commission (PSC) on behalf of your client, Timothy McGibbon. Mr. McGibbon has a concern involving AT&T Communications of the Southern States, LLC. We appreciate the opportunity to help you.

In accordance with Commission Rule 25-22.032(8), Florida Administrative Code, you must complete the attached PSC/CAF Form X, and return it to the Commission within 15 days from the date of this letter. Please be sure to address your letter and Form X to the Office of the General Counsel. **If the completed Form X is not postmarked by July 17, 2002, which is 15 days from the date of this letter, your informal conference request will be denied.**

Staff in the General Counsel's Office will review your Form X and recommend if an informal conference should be granted. In the event that the conference is granted, the staff member will contact you.

If Staff finds that your case has no basis upon which relief may be granted, a recommendation will be made to the Commissioners to dismiss the complaint. You will be notified in writing about this decision.

---

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0862

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PSC Website: <http://www.floridapsc.com>

Internet E-mail: [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us)

Michael Twomey, Esquire  
Page 2  
July 1, 2002

I hope this information is helpful. If you have any questions, please contact the General Counsel's office at 1-850-413-6248.

Sincerely,

Beverlee S. DeMello, Director  
Division of Consumer Affairs

BSD:kes

Attachment

c: AT&T Communications of the Southern States, LLC.



FLORIDA PUBLIC SERVICE COMMISSION  
INFORMAL CONFERENCE REQUEST FORM

FPSC Complaint Number: 368480T  
Customer's Name: Mr. Timothy McGibbon  
Authorized Representative: Michael Twomey, Esquire  
Address: P. O. Box 5256  
Address: Tallahassee, FL 32314-5256  
Telephone Number (voice): 1-850-421-9530 (Fax):  
E-mail address (if any):

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*Please address the following statements using additional pages if necessary.*

Please identify the issues to be resolved. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please describe the facts that are in dispute. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please identify the dollar amount in dispute. \_\_\_\_\_

Please provide a suggested resolution or the relief sought. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICE:** This form must be postmarked by **July 17, 2002**. Failure to provide this information may result in denial of the informal conference request.



## Randy Roland

---

**From:** Paul Lowery  
**Sent:** Wednesday, September 19, 2001 11:20 AM  
**To:** Randy Roland  
**Subject:** FW: Florida Lottery 368480T Timothy McGibbon

here it is.

-----Original Message-----

**From:** Couch, Virgil E (Eddie) - LGA [mailto:ecouch@att.com]  
**Sent:** Wednesday, September 19, 2001 10:41 AM  
**To:** 'plowery@psc.state.fl.us'  
**Subject:** Florida Lottery 368480T Timothy McGibbon

Paul,

AT&T is in need of the customer's bill copies in question for the above referenced complaint. Your office might have a set of the bill copies. Can you have someone in your office retrieve these bill copies for AT&T.

Please call with any questions,

Thank you for your help.

Eddie Couch  
Complaints Escalation Manager  
AT&T Law & Government Affairs  
1200 Peachtree Street # 8039  
Atlanta, GA 30309  
V- 404-810-8923  
F- 404-877-7671  
ecouch@att.com

**Angie Hashisho**

---

**From:** Apruzzese, Vincent A, JR (Vince) - LGA [vincea@att.com]  
**Sent:** Friday, July 20, 2001 10:43 AM  
**To:** 'pscreply@psc.state.fl.us'  
**Cc:** Mock, Shirley M - LGA; Flynn, Jeffrey P - LGA  
**Subject:** 361727T 368480T

**AT&T**

**Response to Consumer Request filed with  
Florida PSC**

**Fax Number: (850) 413-7168**

**From: Vince Apruzzese (404) 810-7623 Voice (404) 810-5901 Fax**

AT&T has investigated the below referenced request. Below are details of that investigation and the action taken. AT&T will consider this complaint closed unless further questions are received. Please advise AT&T when your office has closed the complaint.

368480T

McGibbon/Florida Lottery

AT&T has spoken to the customer on 7/12/01 and all charges were sustained.

**MICHAEL B. TWOMEY**

ATTORNEY AT LAW  
POST OFFICE BOX 5256  
TALLAHASSEE, FLORIDA 32314-5256  
Tel. (850) 421-9530 Fax. (850) 421-8543  
e-mail: miketwomey@talstar.com

July 24, 2001

Beverlee DeMello  
Director of Consumer Affairs  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Complaint Involving Florida Lottery/Tim McGibbon/AT&T

Dear Ms. DeMello:

Per our telephone conversation earlier today, I am requesting that the Commission direct AT&T to desist in its efforts to collect the disputed tolls that are the subject of Mr. McGibbon's complaint pending the resolution of his complaint and, further, that AT&T be directed to not disconnect the Florida Lottery's long distance service on the line(s) that were utilized in the disputed calls.

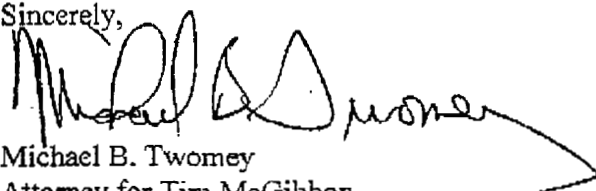
Yesterday I spoke with Mr. Kenneth Hart, General Counsel at the Florida Lottery, who informed me that AT&T had refused to desist in its demands for payment of the disputed toll charges, notwithstanding the pending complaint at the Commission by Mr. McGibbon. Mr. Hart also expressed a concern that AT&T might at any moment discontinue service to the Lottery lines in question if the disputed tolls were not paid. Understandably, Mr. Hart was concerned with the possibility of losing toll service to a number of his critical lines.

It is a violation of Commission rules to threaten discontinuation of service or to demand payment of disputed amounts during the pendency of a complaint. Mr. McGibbon's position that he should not be obliged to pay the disputed tolls will be greatly compromised if AT&T effectively coerces the Florida Lottery to pay the tolls under the threat of discontinued service. The fact that AT&T may think that Mr. McGibbon is not a proper party to complain of the legality of the "cyber dialer attack" tolls should be irrelevant to its ability to coerce payment pending the resolution of the complaint, to include the issue of Mr. McGibbon's standing to dispute the tolls.

I would appreciate your directing AT&T to desist in further collection efforts of the tolls in question pending the full and complete resolution of the complaint and, further, that you direct AT&T to acknowledge in writing to the Florida Lottery that it will not disconnect the lines in question while the McGibbon complain is pending.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael B. Twomey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael B. Twomey  
Attorney for Tim McGibbon

cc: Kenneth Hart, Esquire

Account Number: 019 951 1131 001  
 Bill Date: JUL 25, 2000  
 Payment Due Date: AUG 25, 2000



FLA STATE OF  
 250 HARRIOTT DR  
 TALLAHASSEE FL 32399-6573  
 REF # 850 385 3961

Subaccount: 750 462 3736 002

**AT&T Service**  
**Call Detail**

ITEM	DATE	TIME (hh:mm:ss)	PLACE	AREA CODE NUMBER	DURATION (hh:mm:ss)	CALL TYPE	TIME OF DAY	POST DISCOUNT AMOUNT	ITEM	DATE	TIME (hh:mm:ss)	PLACE	AREA CODE NUMBER	DURATION (hh:mm:ss)	CALL TYPE	TIME OF DAY	POST DISCOUNT AMOUNT
------	------	-----------------	-------	------------------	---------------------	-----------	-------------	----------------------	------	------	-----------------	-------	------------------	---------------------	-----------	-------------	----------------------

BILLED NUMBER: 950 395-8961  
 LONG DISTANCE SERVICE  
 ELIGIBLE FOR DISCOUNT  
 INTERNATIONAL DIRECT DIALED

1	7/10/00	2:10:27P	TO MADAGASCAR	MP 261769078	0:54	DDC OPEAK		2.79									
2	7/10/00	2:11:52P	TO MADAGASCAR	MP 261769078	4:36	DDC OPEAK		20.43									
3	7/10/00	2:12:53P	TO MADAGASCAR	MP 261769078	0:54	DDC OPEAK		2.79									
4	7/10/00	2:20:13P	TO MADAGASCAR	MP 261769078	1:00:30	DDC OPEAK		187.32									
5	7/10/00	2:22:20P	TO MADAGASCAR	MP 261769078	1:00:42	DDC OPEAK		187.94									
6	7/10/00	4:22:53P	TO MADAGASCAR	MP 261769078	0:54	DDC OPEAK		2.79									
7	7/10/00	4:35:47P	TO MADAGASCAR	MP 261769078	1:13:36	DDC OPEAK		104.00									
8	7/11/00	2:00:28P	TO MADAGASCAR	MP 261769078	0:130	DDC OPEAK		1.55									
9	7/11/00	2:01:57P	TO MADAGASCAR	MP 261769078	50:48	DDC OPEAK		157.28									
10	7/11/00	5:03:14P	TO MADAGASCAR	MP 261769078	52:04	DDC OPEAK		165.33									
11	7/11/00	3:57:00P	TO MADAGASCAR	MP 261769078	47:106	DDC OPEAK		148.85									
12	7/11/00	4:54:22P	TO MADAGASCAR	MP 261769078	32:112	DDC OPEAK		118.27									
13	7/11/00	7:54:18P	TO MADAGASCAR	MP 261769078	27:42	DDC OPEAK		84.27									
14	7/12/00	4:05:20P	TO MADAGASCAR	MP 261769078	1:124	DDC OPEAK		129.18									
15	7/12/00	10:20:14P	TO MADAGASCAR	MP 261769078	1:00:152	DDC OPEAK		187.31									
16	7/13/00	1:23:13P	TO MADAGASCAR	MP 261769078	32:136	DDC OPEAK		703.93									
17	7/13/00	2:00:104P	TO MADAGASCAR	MP 261769078	1:00:170	DDC OPEAK		187.31									
18	7/13/00	3:02:16P	TO MADAGASCAR	MP 261769078	52:18	DDC OPEAK		161.92									
19	7/13/00	4:14:18P	TO MADAGASCAR	MP 261769078	45:26	DDC OPEAK		160.54									
20	7/13/00	3:03:14P	TO MADAGASCAR	MP 261769078	1:00:134	DDC OPEAK		187.31									
21	7/14/00	1:02:30P	TO MADAGASCAR	MP 261769078	31:24	DDC OPEAK		97.21									
22	7/14/00	2:34:20P	TO MADAGASCAR	MP 261769078	1:00:30	DDC OPEAK		187.91									
23	7/14/00	3:45:22P	TO MADAGASCAR	MP 261769078	32:02	DDC OPEAK		74.20									
24	7/18/00	12:11:21P	TO MADAGASCAR	MP 261769078	37:10	DDC OPEAK		115.40									
25	7/19/00	1:49:18P	TO MADAGASCAR	MP 261769078	1:00:24	DDC OPEAK		187.01									
26	7/19/00	2:50:11P	TO MADAGASCAR	MP 261769078	1:00:20	DDC OPEAK		187.31									
27	7/19/00	2:53:06P	TO MADAGASCAR	MP 261769078	57:06	DDC OPEAK		178.78									
28	7/22/00	1:57:17P	TO MADAGASCAR	MP 261769078	43:12	DDC OPEAK		133.75									
29	7/21/00	11:55:00P	TO MADAGASCAR	MP 261769078	1:00:30	DDC OPEAK		187.31									
30	7/27/00	10:55:19P	TO MADAGASCAR	MP 261769078	40:40	DDC OPEAK		124.22									

3853961  
 385 3961

ORIGINAL

TOTAL INTERNATIONAL DIRECT DIALED 123,771.47  
 SUBTOTAL FOR 850 395-8961 123,771.47

~~800 222 0300~~  
~~800 312 5288~~  
 TIMOTHY McGIBSON  
 AT&T Business  
 Lisa

© All rights reserved  
 International Block  
 thru 811

850  
 487  
 7777 x2035  
 by 8/31/00

800 524 2455 - Customer Care (Lisa)

ORIGINAL

Sep-21-01 10:43

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<u>Identification</u>	<u>Result</u>	<u>Pages</u>	<u>Type</u>	<u>Date</u>	<u>Time</u>	<u>Duration</u>	<u>Diagnostic</u>
614048777671	OK	02	Sent	Sep-21	10:42	00:01:06	002482030022

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STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY



OFFICE OF THE GENERAL COUNSEL  
HAROLD A. MCLEAN  
GENERAL COUNSEL  
(850) 413-6199

## Public Service Commission

May 20, 2002

Michael B. Twomey, Esquire  
P.O. Box 5256  
Tallahassee, Florida 32314-5256

**Re: Complaint No. 368480-T, Complaint of Timothy McGibbon against AT&T**

Dear Mr. Twomey:

On March 15, 2001, Mr. McGibbon filed a complaint against AT&T for improper billing of international toll charges incurred by the Florida State Lottery (Lottery) when Mr. McGibbon's son used his state-provided internet connection. As noted in the complaint, Mr. McGibbon is not the official holder of the AT&T service or account number in question. However, Mr. McGibbon alleged that he was the "real party in interest" because the Florida Lottery would force him to reimburse the Lottery for any monies it pays to AT&T for these calls.

As noted above, the Lottery is the account holder in the above matter and has standing to lodge a complaint against AT&T for improper billing. However, the Lottery has not filed a complaint against AT&T regarding this matter. Pursuant to Rule 25-22.032, Florida Administrative Code, any customer of a regulated utility may file a complaint whenever he has an unresolved dispute with the utility regarding his telephone service. However, the rule does not permit a person who is not the customer of the utility to file a complaint regarding another person's account.

Thus, Mr. McGibbon does not have standing to file this complaint since he is not the account holder and was not filing the complaint on behalf of the Lottery but rather himself personally. Whether or not Mr. McGibbon is held liable for non-business calls made on the Lottery's account, is an internal matter between the Lottery and Mr. McGibbon over which the Commission has no jurisdiction.

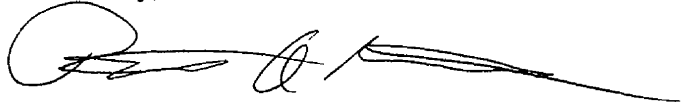
Further, after investigating the matter, staff has been unable to determine that the complaint involves any intrastate charges, but rather only international charges incurred by use of the internet. The Commission does not have jurisdiction over international telecommunications services. In staff's opinion, the Federal Communications Commission is the appropriate agency to address any complaints regarding improperly billed international calls.

Michael B. Twomey, Esquire  
Page 2  
May 20, 2002

Since the account holder of record has not filed a complaint and the complaint involves improperly billed international calls, Commission staff proposes to resolve the complaint by closing Complaint No. 368480-T, Complaint of Timothy McGibbon against AT&T. Please be aware that the opinions expressed herein are those of Commission staff and as such, are not binding upon the Commission.

In accordance with Rule 25-22.032 (8), Florida Administrative Code, should you disagree with the proposed resolution, you may request an informal conference. The request for informal conference must be made in writing and filed with the Division of Consumer Affairs within 30 days after the proposed resolution is sent to you. If you have any questions, please contact me at (850) 413 - 6220.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia A. Christensen', with a long horizontal flourish extending to the right.

Patricia A. Christensen  
Senior Attorney

PAC

cc: Division of Consumer Affairs (DeMello, Raspberry)

AT&T  
Law and Government Affairs - Southern Region  
Suite 8100  
1200 Peachtree Street, N.E.  
Atlanta, GA 30309





---

**Jim Lamoureux**  
Senior Attorney  
Law and Government Affairs  
Southern Region  
jlamoureux@att.com

Promenade 1  
1200 Peachtree Street N.E.  
Atlanta, GA 30309  
404 810 4196  
FAX: 404 877 7648

August 30, 2001

**BY FACSIMILE AND U.S. MAIL**

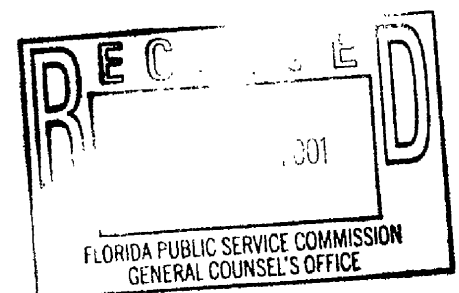
Patricia Christensen  
Senior Attorney  
Division of Legal Services  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

**Re: Complaint No. 368480T, Complaint of Timothy McGibbon against AT&T**

Dear Ms. Christensen:

In response to your letter of August 15, 2001, to Mr. Flynn, and as Mr. Flynn set forth in his earlier letter to Mr. McClain, this matter concerns the delivery by AT&T of international telecommunications services, which are not subject to regulation by the Florida Public Service Commission. In addition, the complainant in this matter is not a subscriber of services from AT&T for the line in question. The subscriber for the line and services in question is the Florida Lottery Commission, not Mr. McGibbon, and the Florida Lottery Commission has filed no complaint with respect to its receipt of service from AT&T. Accordingly, AT&T does not believe that the Commission has jurisdiction or authority over this matter.

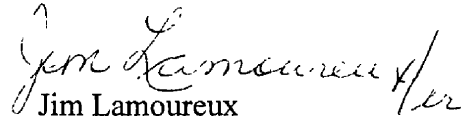
Because the Commission has no jurisdiction or authority over this matter, AT&T believes that the proper course would be for the Staff and the Commission to dismiss this complaint. Accordingly, AT&T respectfully requests that the Staff dismiss Complaint No. 368480T, and in light of its request to dismiss the complaint, AT&T respectfully declines to respond to the requests set forth in your letter of August 15, 2001, to Mr. Flynn.



Patricia Christensen  
August 30, 2001  
Page 2 of 2

If you have any further questions regarding this matter, please do not hesitate to call me.

Sincerely,

  
Jim Lamoureux

cc: Harold McClain, Esq.

STATE OF FLORIDA

COMMISSIONERS:  
E. LEON JACOBS, JR., CHAIRMAN  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI



DIVISION OF LEGAL SERVICES  
NOREEN S. DAVIS  
DIRECTOR  
(850) 413-6199

## Public Service Commission

August 15, 2001

Jeffrey P. Flynn, Esquire  
AT&T  
Room 3236B2  
295 North Maple Avenue  
Basking Ridge, New Jersey 07920

**STAFF'S FIRST  
DATA REQUESTS**

**Re: Complaint No. 368480T, Complaint of Timothy McGibbon against AT&T**

Dear Mr. Flynn:

By this letter, the Commission staff requests that AT&T respond to staff's First Data Requests regarding the above referenced matter pursuant to Section 364.183, Florida Statutes. Please provide written responses or documentation in response to the information requested below:

1. Please explain how a call that is connected to the customer's Internet Service Provider through local telephone number results in a toll charge to the Nation of Madagascar.
2. Please state at what point in the telephone call to Madagascar is AT&T first involved?
3. Please explain how AT&T is accessed by the computer modem?
4. Please explain how, and by whom, is the modem told to dial AT&T and an international telephone number?
5. If AT&T is accessed via a dial around number, please provide the access number that was used for this complaint.
6. Please state what notice is given, if any, to the customer that indicates the customer is about to incur the charges that were charged in this case?
7. Does AT&T have any contractual agreement with either the website provider or terminating telephone company in Madagascar? If so, please provide a copy of the contract.

August 15, 2001

8. Does AT&T compensate the website provider directly or indirectly, please explain how AT&T compensates the website provider?
9. Please explain how and in what amount per call does AT&T compensate the terminating telephone company in Madagascar?
10. Has AT&T received complaints from other Florida consumers that the consumer has no knowledge of making calls to Madagascar or authorized this type of call through the consumer's computer? If so, how many since January 1, 2001?
11. Please stated what action has AT&T taken, if any, to prevent Florida consumers calls being completed via a computer modem, to foreign countries providing websites without the consumers knowledge?
12. Please explain, what action AT&T can take to prevent these types of calls from being completed?
13. Can AT&T determine the website address that was accessed in regard to this complaint? If so, how does AT&T obtain this information?
14. Does AT&T block access to websites found to be offering service through programs that are downloaded to the customer's computer that results in international calls being made totally unknown to the customer? If not, why?
15. In a response from AT&T to the complaint number 368480T, AT&T states that these calls were made from a telephone under the control and use of Mr. McGibbons and his family. If these calls were made by the computer modem that was not controlled by Mr. McGibbons or his family, but was under the control of a program downloaded from the website, is it AT&T's position that this line was still under the control of Mr. McGibbons? If so, please explain why.
16. Has AT&T worked with the Federal Trade Commission or the Federal Communications Commission to help solve this type of problem? If so, what were the results?
17. Please explain what action, if any, AT&T can take to prevent children under the age of eighteen from accessing a website that disconnects the local service provider and connects to AT&T's long distance service.
18. Please explain AT&T's position on whether a minor child can consent to disconnecting from the local service provider to connect with AT&T's long distance service.

Jeffrey P. Flynn, Esquire

Page 3

August 15, 2001

Please file the original and five copies of the requested information by **August 31, 2001**, with Ms. Blanca Bayo, Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

Please feel free to call me at (850) 413-6220 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Christensen', with a long horizontal flourish extending to the right.

Patricia Christensen  
Senior Attorney

PAC:lw  
Enclosure

cc: Division of Competitive Services (Moses)  
Michael Twomey, Esquire

I:\datareq.pac

STATE OF FLORIDA

COMMISSIONERS:  
E. LEON JACOBS, JR., CHAIRMAN  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI



DIVISION OF LEGAL SERVICES  
NOREEN S. DAVIS  
DIRECTOR  
(850) 413-6199

## Public Service Commission

September 12, 2001

Mr. Jim Lamoureux, Esquire  
Law and Government Affairs  
Souther Region  
Promenade 1  
1200 Peachtree Street N.E.  
Atlanta, Georgia 30309

**Re: Complaint No. 368480T, Complaint of Timothy McGibbon against AT&T**

Dear Mr. Lamoureux:

Commission staff received your letter dated August 30, 2001, in the above-referenced matter, in response to Staff's First Data Request dated August 15, 2001. Pursuant to Section 364.183, Florida Statutes, the Commission may have access to all records of a telecommunications company that are reasonably necessary for the disposition of matters within the Commission's jurisdiction. Section 364.183, Florida Statutes, further provides that the Commission may require a telecommunications company to file other data directly related to matters within the Commission's jurisdiction. In your letter, AT&T takes the position that complaint involves delivery of AT&T international service, which is not subject to the jurisdiction of this Commission.

However, staff does not believe that there is sufficient information to make a determination that the Commission has no jurisdiction in the above-referenced matter. It is not clear at this point whether there is some component of this matter that is within the Commission's jurisdiction. Staff believes that information requested by Staff's First Data Request is reasonable necessary to dispose of the complaint that has been filed with the Commission. Therefore, staff requests that AT&T provide the information requested in Staff's First Data Request. Without this information, staff is not in a position to recommend dismissal of this complaint at this time.

Please file the original and five copies of the requested information by **September 24, 2001**, with Ms. Blanca Bayo, Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

Jim Lamoureux  
Page 2  
September 12, 2001

Please feel free to call me at (850) 413-6220 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Christensen', with a long horizontal flourish extending to the right.

Patricia Christensen  
Senior Attorney

PAC:lw  
Enclosure

cc: Division of Competitive Services (Moses)  
Michael Twomey, Esquire

i:\mcgiblet.pac



Jim Lamoureux  
Senior Attorney  
Law and Government Affairs  
Southern Region  
jlamoureux@att.com

Promenade 1  
1200 Peachtree Street N.E.  
Atlanta, GA 30309  
404 810 4196  
FAX: 404 877 7648

September 24, 2001

**BY FACSIMILE AND U.S. MAIL**

Patricia Christensen  
Senior Attorney  
Division of Legal Services  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

SEP 27 2001

**Re: Complaint No. 368480T, Complaint of Timothy McGibbon against AT&T**

Dear Ms. Christensen:

In response to your letter to me of September 12, 2001, AT&T respectfully disagrees with your interpretation of F.S. Section 364.183. That statute clearly only allows the Commission to request telecommunications company records pertaining to matters within the jurisdiction of the Commission. AT&T does not believe this statute allows the Commission (or Staff) to seek records from a telecommunications company on the grounds that "there is insufficient information to make a determination that the Commission has *no* jurisdiction."<sup>1</sup> Rather, the statute clearly requires an affirmative determination of jurisdiction in order to allow the Commission to request records from a telecommunications company.

Moreover, even if your interpretation is correct, there *is* sufficient information to warrant a conclusive determination that the Commission has *no* jurisdiction over this matter. Even a casual review of the bill provided by Mr. McGibbon in connection with his "complaint" reveals that the *only* charges in question are for international direct dialed calls to the country of Madagascar. The Florida Public Service Commission only has jurisdiction over intrastate Florida telecommunications; it has no jurisdiction over interstate telecommunications or

<sup>1</sup> Moreover, AT&T is unaware of any statute that permits the Staff to issue "data requests" to telecommunications companies outside the process of discovery in a proceeding before the Commission. F.S. § 364.183 only allows the Commission to request "records" from telecommunications companies.



international telecommunications. Only the Federal Communications Commission has jurisdiction over international telecommunications. *See, e.g.*, 47 U.S.C. § 1 (Federal Communications Commission established to regulate interstate and foreign commerce in communication by wire and radio); § 2 (provisions of the Telecommunications Act shall apply to *all* interstate and foreign communication by wire or radio). Accordingly, the Florida Public Service Commission has no jurisdiction over the calls in question and thus has no authority to request records from AT&T pursuant to F.S. § 364.183 in connection with this matter.

Moreover, your letter does not address the fact that the subscriber for the line and services in question is the Florida Lottery Commission, not Mr. McGibbon. That also is plainly evidenced by the bill for the charges in question. I assume you have a copy of that bill, and I would be happy to provide you a copy if you do not. As I said in my earlier letter, the Florida Lottery Commission has filed no complaint with respect to its receipt of service from AT&T. Accordingly, AT&T does not believe that the Commission has jurisdiction or authority over this matter.

Because the Commission has no jurisdiction or authority over this matter, AT&T continues to believe that the proper course would be for the Staff and the Commission to dismiss this complaint. Accordingly, AT&T further requests that the Staff dismiss Complaint No. 368480T, and in light of its further request to dismiss the complaint, AT&T respectfully declines to respond to the requests set forth in your letter of August 15, 2001, to Mr. Flynn.

If you have any further questions regarding this matter, please do not hesitate to call me.

Sincerely,

  
Jim Lamoureux

cc: Harold McClain, Esq.