



Public Service Commission  
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**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** NOVEMBER 20, 2002

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

**FROM:** OFFICE OF THE GENERAL COUNSEL (CHRISTENSEN) *PC*  
DIVISION OF CONSUMER AFFAIRS (PLESCOW) *JP*  
DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (KENNEDY) *RR*

**RE:** DOCKET NO. 021056-TI - COMPLAINT OF TIMOTHY MCGIBBONS  
AGAINST AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC  
D/B/A LUCKY DOG PHONE CO. D/B/A ACC BUSINESS D/B/A  
SMARTALK D/B/A UNISPEAKSM SERVICE D/B/A  
WWW.PREPAIDSERVICEGUIDE.COM D/B/A CONQUEST FOR ALLEGED  
IMPROPER BILLING OF INTERNATIONAL TOLL CHARGES INCURRED  
VIA INTERNET USE.

**AGENDA:** 12/02/02 - REGULAR AGENDA - INTERESTED PARTIES MAY  
PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\021056.RCM

CASE BACKGROUND

On March 15, 2001, the Division of Consumer Affairs (CAF) received a complaint from attorney, Michael B. Twomey, on behalf of Timothy McGibbons. Mr. Twomey alleged in his complaint that AT&T Communications of the Southern States (AT&T) improperly billed calls made by his client's son using the Internet. At issue are Internet calls made from Mr. McGibbons' home using a dedicated computer line owned by his employer, the Florida Lottery. The Florida Lottery is the official holder of the AT&T service and account in question. Staff notes that the Florida Lottery has not filed a complaint with the Commission regarding this matter.

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In the complaint, Mr. Twomey states that his client, Mr. McGibbons, is the real "party in interest" because the Florida Lottery will require Mr. McGibbons to reimburse the Lottery for the cost of the Internet calls. Mr. Twomey claims that AT&T improperly billed in excess of \$3,700 in international toll charges for calls allegedly made to the Nation of Madagascar at a billing rate of \$3.99 per minute. Mr. Twomey asserts that when Mr. McGibbons' minor child was using the Internet to visit a website, the child was deceived into making a selection on his computer screen, which unbeknownst to him caused the computer to disconnect from the local Internet Service Provider. Once disconnected, the computer then dialed an international number whose per minute charges are among the highest in the world. Mr. Twomey asserts that at no time did the Florida Lottery, any employee at the Florida Lottery, or the minor child know that the local Internet service was disconnected and that an international call had been placed in this "Cyber Dialer Attack." Mr. Twomey asks that the calls be forgiven because he believes they were placed as a result of deceitful practices. In addition, Mr. Twomey in his initial complaint requests that the Florida Lottery place a block on the computer line to preclude any future international calls.

On March 29, 2001, AT&T sent its report to CAF staff. In its report, AT&T confirmed that the Florida Lottery was the customer of record and as such, AT&T could not provide specifics of its investigation to Mr. McGibbons. AT&T also asserted that it was sustaining the charges since the charged service was rendered in good faith. Further, AT&T asserted that asking the company to absorb the costs would be unfair since it had already paid the website owner and thus would lose money. However, AT&T stated that it offered to waive half of the cost, but Mr. McGibbons declined the offer.

On June 5, 2001, CAF staff requested that AT&T provide a one-time waiver of the charges as it had done in two similar cases. In its request, staff noted that in similar complaints, AT&T treated these types of calls as 900 calls and issued credits for the first bill.

In its July 23, 2001, supplemental response, AT&T indicated that it spoke with the customer and all charges were sustained. On July 24, 2001, Mr. Twomey sent a letter requesting that the Commission order AT&T to desist any efforts to collect the disputed tolls pending resolution of the complaint.

On July 26, 2001, CAF referred the complaint to the Office of the General Counsel for its review. On August 15, 2001, legal staff with the assistance of staff from the Division of Competitive Markets and Enforcement sent a data request to AT&T. On August 30, 2001, AT&T responded by letter that it did not believe that the Commission had jurisdiction over this matter because it involved international calls and Mr. Gibbons is not the customer of record. AT&T stated that for those reasons it believed that the complaint should be dismissed. AT&T then stated that it respectfully declined to respond to staff's data request in light of its request to dismiss the complaint.

Legal staff sent another letter on September 12, 2001, requesting that AT&T respond to staff's data request. In the letter, staff indicated that it was unclear at that point whether there was some component of the complaint that was within the Commission's jurisdiction. Therefore, staff stated that there was insufficient information to determine that the Commission had no jurisdiction in the matter.

In its September 24, 2001, letter, AT&T responded that it believes there is sufficient information to conclusively determine that the Commission lacks jurisdiction since the complaint only involves international, direct-dialed calls to Madagascar. AT&T also asserted that the Federal Communications Commission (FCC) has exclusive jurisdiction over international calls. Further, AT&T reiterated that Mr. McGibbons is not the customer of record and that the Florida Lottery did not file a complaint. AT&T concluded in its letter that for all these reasons the complaint should be dismissed.

On May 20, 2002, staff legal counsel sent a letter to Mr. Twomey advising him that since the account holder of record did not file a complaint and the complaint involves allegedly improperly billed international calls, staff proposed closing the complaint. In the letter, Mr. Twomey was also advised that he could request an informal conference if he disagreed with the resolution.

On June 19, 2002, staff legal counsel received a letter from Mr. Twomey requesting an informal conference. On July 1, 2002, CAF staff sent Mr. Twomey a letter with an enclosed copy of Form X required by Rule 25-22.032(8), Florida Administrative Code, to request an informal conference. On July 17, 2002, Mr. Twomey

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requested an informal conference and subsequently Form X was completed.

An informal conference was scheduled and subsequently held on August 29, 2002. At the informal conference, Mr. Twomey reiterated his position that AT&T was billing for an adult website which was improperly provided to a minor. Mr. Twomey again requested that AT&T credit the account for the service he asserts was improperly provided to a minor. AT&T restated its position that the complaint does not fall within this Commission's jurisdiction. Further, AT&T declined to credit the account. The informal conference was concluded without a settlement.

This recommendation addresses whether the complaint should be dismissed.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission dismiss Complaint No. 368480T, Complaint of Timothy McGibbons against AT&T for alleged improper billing of international toll charges incurred for Internet use?

**RECOMMENDATION:** Yes, Complaint No. 368480T, Complaint of Timothy McGibbons against AT&T for alleged improper billing of international toll charges incurred for Internet use should be dismissed for lack of standing by the complainant and lack of subject matter jurisdiction. (CHRISTENSEN, PLESCOW, KENNEDY)

**STAFF ANALYSIS:** As noted in the Case Background, on March 15, 2001, the Division of Consumer Affairs (CAF) received a complaint from attorney, Michael B. Twomey, on behalf of Timothy McGibbons, for alleged improper billing of international toll charges by AT&T. Specifically, the complaint was lodged against AT&T for improper billing of international toll charges incurred by the Florida Lottery when Mr. McGibbons' son used his state-provided Internet connection. As noted in the complaint, Mr. McGibbons is not the official holder of the AT&T service or account number in question. However, Mr. McGibbons alleged that he was the "real party in interest" because the Florida Lottery would force him to reimburse the Florida Lottery for any monies it pays to AT&T for these calls.

Staff believes that the Florida Lottery, as the account holder in this matter, has standing to lodge a complaint against AT&T for improper billing. However, the Florida 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, unless the customer of the utility provides a written authorization that the third party is authorized to act on behalf of the utility's customer of record. It is staff's understanding that the Florida Lottery has not provided Mr. McGibbons any such authorization to act on its behalf regarding this account.

Thus, staff believes that Mr. McGibbons 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 Florida Lottery but

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rather himself personally. Whether or not Mr. McGibbons is held liable for non-business calls made on the Florida Lottery's account is an internal matter between the Florida Lottery and Mr. McGibbons 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 alleged improperly billed international calls.

Since the account holder of record has not filed a complaint and the complaint involves billing of international calls, staff recommends that Complaint No. 368480T, Complaint of Timothy McGibbons against AT&T for alleged improper billing of international toll charges incurred for Internet use should be dismissed for lack of standing by the complainant and lack of subject matter jurisdiction.

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**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** If the Commission approves staff's recommendation on Issue 1, then this docket should be closed. (CHRISTENSEN)

**STAFF ANALYSIS:** This docket should be closed if the Commission approves staff's recommendation on Issue 1.