

State of Florida



Public Service Commission

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DATE: April 8, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Rojas) *gr* *bl* *2/10/04*
Division of Competitive Markets & Enforcement (Moses)

RE: Docket No. 040026-TP – Complaint and petition by CAT Communications International, Inc. against BellSouth Telecommunications, Inc. for alleged unlawful emergency telephone service charge and telecommunications relay service charges.

AGENDA: 04/20/04 – Regular Agenda – Motion for Summary Final Order – Decision Prior to Hearing - Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040026.RCM.DOC

CASE BACKGROUND

CAT Communications International, Inc. (CCI) currently purchases and resells BellSouth services pursuant to a resale agreement entered into between CCI and BellSouth on November 6, 2002. The Agreement was approved by the Commission by operation of Section 252(e)(4) of the Telecommunications Act of 1996 on March 10, 2003. On January 8, 2004, CCI filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for alleged unlawful collection of emergency telephone service charges and telecommunications relay service charges. On January 23, 2004, BellSouth filed a Motion to Dismiss Complaint on the grounds that CCI failed to state a claim for which the Florida Public Service Commission may grant relief. CCI did not file a response to BellSouth's Motion to Dismiss. Thereafter, on March 9, 2004, BellSouth filed a Motion for Summary Final Order. CCI also failed to respond to this motion. This recommendation addresses primarily the Motion for Summary Final Order.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant BellSouth Telecommunications, Inc.'s Motion for Summary Final Order?

RECOMMENDATION: Staff recommends that the Motion for Summary Final Order be granted. (ROJAS, MOSES)

STAFF ANALYSIS:

CCI's Complaint

CCI complains that BellSouth is inappropriately collecting 911 fees and telecommunications access system surcharges from CCI. CCI states that it collects these charges from its end users, and therefore, should be allowed to retain the associated administrative fees allowed by Section 365.171, Florida Statutes and Section 427.704, Florida Statutes. CCI requests that the Commission direct BellSouth to cease and desist from charging or collecting 911 and other surcharges from CCI.

BellSouth's Motion

BellSouth's Motion for Summary Final Order claims that it is appropriately collecting 911 fees and telecommunications access system surcharges from CCI, as provided in the interconnection agreement between the parties. Section 1.1.5 of the Interconnection Agreement between the parties clearly delineates the process by which all charges applicable to resold service will be collected. While BellSouth does not refute any of the facts stated by CCI, BellSouth asserts that it retains the associated administrative fees allowed by Section 365.171, Florida Statutes and Section 427.704, Florida Statutes, due to the provisions contained within Section 1.1.5 of the parties' interconnection agreement.

CCI Response

CCI has filed no response to BellSouth's Motion for Summary Final Order.

Standard of Review

Rule 28-106.204(4), Florida Administrative Code, provides:

Any party may move for summary final order whenever there is no genuine issue as to any material fact. The motion may be accompanied by supporting affidavits. All other parties may, within seven days of service, file a response in opposition, with or without supporting affidavits. A party moving for summary final order later than twelve days before the final hearing waives any objection to the continuance of the final hearing.

The standard for granting a summary final order is very high. The purpose of summary judgment, or in this instance summary final order, is to avoid the expense and delay of trial when no dispute exists concerning the material facts. The record is reviewed in the light most favorable to the party against whom the summary judgment is to be entered. When the movant presents a showing that no material fact on any issue is disputed, the burden shifts to his opponent to demonstrate the falsity of the showing. If the opponent does not do so, summary judgment is proper and should be affirmed. The question for determination on a motion for summary judgment is the existence or nonexistence of a material factual issue. There are two requisites for granting summary judgment: first, there must be no genuine issue of material fact, and second, one of the parties must be entitled to judgment as a matter of law on the undisputed facts. See, Trawick's Florida Practice and Procedure, §25-5, Summary Judgment Generally, Henry P. Trawick, Jr. (1999).

In summary, under Florida law, "the party moving for summary judgment is required to conclusively demonstrate the nonexistence of an issue of material fact, and . . . every possible inference must be drawn in favor of the party against whom a summary judgment is sought." Green v. CSX Transportation, Inc., 626 So. 2d 974 (Fla. 1st DCA 1993)(citing Wills v. Sears, Roebuck & Co., 351 So. 2d 29 (Fla. 1977)). Furthermore, "A summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law." Moore v. Morris, 475 So. 2d 666 (Fla. 1985); City of Clermont, Florida v. Lake City Utility Services, Inc., 760 So. 1123 (5th DCA 2000).

Analysis and Conclusion

Staff believes BellSouth has met the standard for a summary final order. Furthermore, summary final order is appropriate in this instance because this is a contract issue and the language in the agreement is clear. See Order No. PSC-00-1540-FOF-TP and Shafer & Miller v. Miami Heart Inst., 237 So.2d 310 (Fla. 3rd DCA 1970) Based on the pleadings, there are no disputes of fact and as a matter of law, BellSouth is entitled to judgment in this matter. The collection of all charges applicable to resold services, including 911 fees and telecommunications access system surcharges, is covered in Section 1.1.5 of Attachment 7 of the interconnection agreement between BellSouth and CCI. (See attachment A) The substance of CCI's complaint is the exact activity agreed to in the interconnection agreement between the two parties. BellSouth has made a conclusive showing that there is no genuine issue of material fact in dispute and that it is entitled to judgment as a matter of law on the undisputed facts. CCI does not dispute that the section is applicable and dispositive of the question. As such, staff recommends that BellSouth's Motion for Summary Final Order be granted.

Docket No. 040026-TP

Date: April 8, 2004

ISSUE 2: Should this Docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, BellSouth's Motion to Dismiss will be rendered moot and no further action will need to be taken. Therefore, this Docket should be closed. **(ROJAS)**

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, BellSouth's Motion to Dismiss will be rendered moot and no further action will need to be taken. Therefore, this Docket should be closed as no further action by the Commission will be required.

BILLING

1. PAYMENT AND BILLING ARRANGEMENTS

The terms and conditions set forth in this Attachment shall apply to all services ordered and provisioned pursuant to this Agreement.

- 1.1 Billing. BellSouth will bill through the Carrier Access Billing System (CABS), Integrated Billing System (IBS) and/or the Customer Records Information System (CRIS) depending on the particular service(s) provided to CCI under this Agreement. BellSouth will format all bills in CBOS Standard or CLUB/EDI format, depending on the type of service provided. For those services where standards have not yet been developed, BellSouth's billing format will change as necessary when standards are finalized by the applicable industry forum.
 - 1.1.1 For any service(s) BellSouth receives from CCI, CCI shall bill BellSouth in CABS format.
 - 1.1.2 If either Party requests multiple billing media or additional copies of bills, the Billing Party will provide these at a reasonable cost.
 - 1.1.3 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to BellSouth.
 - 1.1.4 BellSouth will render bills each month for resold lines on established bill days for each of CCI's accounts. If either Party requests multiple billing media or additional copies of the bills, the Billing Party will provide these at a reasonable cost.
 - 1.1.5 BellSouth will bill CCI in advance for all resold services to be provided during the ensuing billing period except charges associated with service usage, which will be billed in arrears. Charges will be calculated on an individual End User account level, including, if applicable, any charge for usage or usage allowances. BellSouth will also bill CCI, and CCI will be responsible for and remit to BellSouth, all charges applicable to resold services including but not limited to 911 and E911 charges, End Users common line charges, federal subscriber line charges, telecommunications relay charges (TRS), and franchise fees.
 - 1.1.6 BellSouth will not perform billing and collection services for CCI as a result of the execution of this Agreement. All requests for billing services should be referred to the appropriate entity or operational group within BellSouth.
 - 1.1.7 In the event that this Agreement or an amendment to this Agreement effects a rate change to recurring rate elements that are billed in advance, BellSouth will make an adjustment to such recurring rates billed in advance and at the previously effective rate. The adjustment shall reflect billing at the new rates from the Effective Date of the Agreement or amendment.