

Diamond Williams

100175-TL

From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Wednesday, February 16, 2011 3:43 PM
To: Filings@psc.state.fl.us
Subject: 100175-TL AT&T Florida's
Importance: High
Attachments: Document.pdf

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BellSouth Telecommunications, Inc. d/b/a AT&T Florida

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- B. In re: Docket No. 100175-TL: Complaint against AT&T d/b/a BellSouth for Alleged Violation of various sections of Florida Administrative Code, Florida Statutes, and AT&T Regulations pertaining to billing of charges and Collection of charges, fees, and taxes
- C. BellSouth Telecommunications, Inc. d/b/a AT&T Florida
on behalf of Tracy W. Hatch
- D. 6 pages total (includes letter, pleading and certificate of service)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response in Opposition to Petitioner's Motion for Reconsideration

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February 16, 2011

Ms. Ann Cole, Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

In re: Docket No. 100175-TL: Complaint against AT&T d/b/a BellSouth for Alleged violation of various sections of Florida Administrative Code, Florida Statutes, and AT&T Regulations pertaining to billing of charges and Collection of charges, fees, and taxes

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response in Opposition to Petitioner's Motion for Reconsideration, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


Tracy W. Hatch

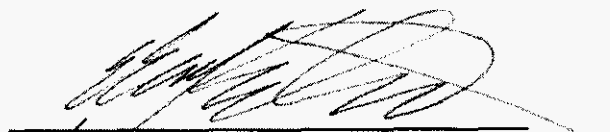
cc: All parties of record
Jerry Hendrix
Gregory R. Follensbee
E. Earl Edenfield, Jr.

CERTIFICATE OF SERVICE
Docket No. 100175-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U.S. Mail this 16th day of February, 2011 to the following:

Adam Teitzman
Larry Harris
General Counsels
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
ateitzma@psc.state.fl.us
lharris@psc.state.fl.us





Tracy W. Hatch

¹ Commission Legal Staff has requested that AT&T Florida redact the customer's name and contact information.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint against AT&T d/b/a BellSouth for) Docket No. 100175-TL
Alleged violation of various sections of Florida)
Administrative Code, Florida Statutes, and AT&T)
Regulations pertaining to billing of charges and)
Collection of charges, fees, and taxes)
_____) Filed: February 16, 2011

AT&T FLORIDA'S RESPONSE IN OPPOSITION TO MOTION FOR RECONSIDERATION

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), pursuant to Rules 25-22.060 and 28- 106.204, Florida Administrative Code, hereby files this Response in Opposition to the Motion for Reconsideration, filed February 8, 2011, by [REDACTED]¹, ("Petitioner"). For both procedural and substantive reasons, Florida Public Service Commission ("Commission") should deny the Petitioner's Motion.

Background

1. On April 7, 2010, Petitioner filed a formal Complaint against AT&T Florida, Inc. seeking "action according to AT&T regulations and that benefits customers according to law e.g. Commission declares customer free from paying tax obligations of the company." On May 3, 2010, AT&T Florida filed a Motion to Dismiss Complaint ("AT&T Motion to Dismiss") on the grounds that the Complaint fails to state a cause of action for which relief can be granted. On May 14, 2010, Petitioner filed a Response to AT&T Florida's Motion to Dismiss.

2. The Commission addressed Petitioner's Complaint at the February 8, 2011 Agenda Conference. Petitioner was present via telephone and presented her arguments supporting her complaint. After hearing from Petitioner, AT&T was given the same opportunity and presented its arguments in support of its Motion to Dismiss. After the presentations by the

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parties, the Commission considered the parties' arguments. At the conclusion of the Commission's deliberations, Petitioner requested additional time for argument but was denied by the Commission. The Commission voted unanimously to grant AT&T Florida's Motion to Dismiss. Within minutes after the vote, Petitioner electronically filed a "Notice and Motion for Reconsideration" seeking "reconsideration and a formal hearing."

Standard of Review

3. The standard for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider in rendering an order. It is not intended as a procedure for re-arguing the whole case merely because the losing party disagrees with the judgment or the order. *See Diamond Cab Co. v. King*, 146 So. 2d 889, 891 (Fla. 1962). A motion for reconsideration may only properly identify a point of fact or law which the Commission overlooked or failed to consider in rendering its order. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981). Further, reconsideration is not appropriate when the movant "only seeks a second hearing on the same contentions" and where, as here, alleged errors "were major issues which were fully argued before the Commission" *Sentinel Star Express Company v. Florida Public Service Commission*, 322 So.2d 503, 505 (Fla. 1975).

Petitioner's Motion for Reconsideration Fails the Standards for Reconsideration

4. Petitioner's Motion utterly fails the standards imposed for granting a motion for reconsideration. Petitioner makes no attempt identify either a point of fact or law that the Commission failed to consider or overlooked during its deliberations leading to its decision to grant AT&T's Motion to Dismiss for failure to state a claim upon which relief could be granted.

5. Petitioner's Motion was filed electronically mere minutes after the Commission announced its vote to grant AT&T Florida's Motion to Dismiss. The Petitioner's Motion is based solely on Petitioner's allegation that she was not allowed sufficient opportunity to argue her case during the Commission's agenda conference on February 8, 2011. Nothing in Petitioner's Motion even suggests an error of fact or law. As noted above, Petitioner was given ample opportunity to argue her case. Petitioner's attempt to simply seek more time and another opportunity to argue is improper in a motion for reconsideration. Accordingly, Petitioner's Motion should be denied.

Petitioner's Motion is Procedurally Defective

6. Petitioner's Motion is both premature and suffers other procedural defects. The Commission voted to grant AT&T's Motion to Dismiss during the February 8, 2011 Agenda Conference. However, the Commission has yet to issue its order. Pursuant to Rule 25-22.060(1)(a), Florida Administrative Code, any "party adversely affected by an order of the Commission may file a motion for reconsideration of order." (emphasis added) Since the Order Granting AT&T's Motion to Dismiss has not yet issued, the procedural process for addressing a party's desire for reconsideration cannot begin. Therefore Petitioner's Motion is premature.

7. Petitioner continues to fail to serve AT&T Florida with her pleadings in violation of Rule 28-106-110, Florida Administrative Code.

Conclusion

8. As discussed above, Petitioner's Motion utterly fails to establish any basis for reconsideration and further, is procedurally defective. Accordingly, AT&T Florida AT&T respectfully requests that the Commission deny Petitioner's Motion for Reconsideration.

Respectfully submitted this 16th day of February, 2011.



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