

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

### -M-E-M-O-R-A-N-D-U-M-

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**DATE:** May 25, 2006

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

**FROM:** Office of the General Counsel (Tan, Scott)  
Division of Competitive Markets & Enforcement (Kennedy)  
Division of Regulatory Compliance & Consumer Assistance (Plescow)

**RE:** Docket No. 060141-TL – Complaint by Karl Amsler and Sonny Stewart against BellSouth Telecommunications, Inc. for alleged improper billing.

**AGENDA:** 06/06/06 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\060141.RCM.DOC

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### Case Background

On July 14, 2004, complaint number 607759T was taken by Florida Public Service Commission (FPSC) staff on behalf of Karl Amsler and Sonny Stewart (Customers). The complaint was filed against BellSouth Telecommunications, Inc. (BellSouth).

The Customers stated they were being overcharged for work that BellSouth performed in removing a telephone pole in the easement of the residence. Additionally, the utility facilities serving the home were placed underground at the Customers' request. This work was to be completed in anticipation of a pool installation (See Attachment A).

The Customers understood that they were responsible for the cost related to the burying of the lines. However, they objected to paying for the replacement of the pole, which was owned by BellSouth, because they alleged the pole was decayed to the point that the neighbor was able to push the pole over once the wires had been removed. In addition, the Customers felt that the pole would have been replaced as part of routine maintenance, at no cost to the customers, for safety reasons. BellSouth's records indicate the cost of the new pole to serve the Customers was not charged to Mr. Amsler.

The Customers acknowledged BellSouth provided them with an estimated cost of \$3,307.00 on July 8, 2003, but they assumed the amount included the cost for BellSouth, Florida Power & Light (FPL), and the cable company, to relocate the three companies' facilities. FPL billed \$1,100.00 to relocate FPL's facilities and the Customers believe that BellSouth should have only billed \$1,604.00 to relocate BellSouth's facilities.

The Customers are dissatisfied with BellSouth because they initially contacted the company in the summer of 2003, and they believed it could be argued that the work was still not complete, because the guy wire anchor was not removed from the property but rather buried.

BellSouth, in receipt of the payment, offered the Customers a credit of \$346.00, which they rejected. The Customers stated they are willing to pay BellSouth \$1,604.00, but that all of the other costs were unrelated and therefore not their responsibility to pay. BellSouth reported that the work was completed on July 19, 2004.

An informal conference was held on July 27, 2005. During the informal conference, the contract between the Customers and BellSouth, for both removing BellSouth's above ground facilities, and the burying of the facilities, was reviewed. A settlement was not reached during the informal conference. This recommendation addresses the Customers' complaint against BellSouth for alleged improper billing.

The Commission has jurisdiction pursuant to Section 364.19, Florida Statutes, and administers consumer complaints pursuant to Rule 25-22.032, Florida Administrative Code.

### **Discussion of Issues**

**Issue 1:** Did BellSouth charge the Customers in accordance with its tariff when assigning special construction costs for a facilities rearrangement at the residence of Karl Amsler and Sonny Stewart?

**Recommendation:** Yes. BellSouth in accordance with its tariff charged Karl Amsler and Sonny Stewart for special construction costs for a facilities rearrangement. (Plescow, Kennedy, Tan, Scott)

**Staff Analysis:** As stated in the Case Background, the Customers complained that BellSouth did not properly charge when assigning special construction costs for a facilities rearrangement. The customers were billed \$3,307.00. The Customers state they are responsible for only \$1,604.00. Under BellSouth's tariff, when BellSouth is requested to relocate a facility, the customer will have to bear the burden of the total cost. The Customers are the only beneficiaries of this telephone rearrangement and burial of facilities serving the home; therefore they should bear the costs.

BellSouth's tariff A5.2.2 (F) (1) (e) for Special Construction states:

When the Company is requested to move, change, rearrange or remove existing plant, for which no specific charge is quoted in this Tariff, the person/company at whose request such move or change is made will be required to bear the costs incurred. Where by statute, ordinance or other legal requirement, existing aerial facilities are required to be relocated underground, the Company will charge the net cost attributable to such relocation to the local exchange subscribers located within the political subdivision or area affected by such statute, or ordinance or other legal requirement. This nonrecurring charge, developed by dividing the total rearrangement and/or removed cost by the total number of subscribers affected by the ordinance, would be billed as a one time charge via the customer's bill. All customers would have the option of paying the full cost upfront or spreading the cost over a specified agreed-to time period via monthly payments.

Section 364.19, Florida Statutes, gives the PSC jurisdiction over a contract between a telecommunications company and its customers that relates to the facilities (outside wire) used by the company to provide a telecommunications service. Section 364.19, Florida Statutes, states:

The Commission may regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons.

Therefore, the Commission has jurisdiction to address the concerns of the Customers regarding the assessment of charges for the work done for the rearrangement and burial of facilities. The amounts charged to the customers were presented on July 8, 2003 in an email (see Attachment B).

Placing guys and anchor	\$305.91
Removing old guy and anchor	\$174.51
Removing existing aerial cable	\$99.31
New cable placing, material, splicing	\$1,604.00
Splice cost for aerial cable	\$207.11
Re-feeding customer and neighbor	\$245.86
Overhead (engineering)	\$670.00
<b>Total cost, including overhead rate</b>	<b>\$3,307.00</b>

The contract (authorization letter) specified that the Customers would be responsible for coordinating the work of all the involved utilities. Staff notes that the contract provided that the costs were exclusively for the BellSouth portion of the project. Additionally, the contract did not provide the cost for any of the other involved utilities' portions of the project. The authorization letter was signed by Karl Amsler on January 20, 2004 (see Attachment C).

During the July 27, 2005, Informal Conference, the Customers indicated that they did not understand that the contracted cost was strictly for work done by BellSouth. The Customers ask to be responsible for only \$1,604.00 of the contracted amount. BellSouth has stated that the Customers were not charged for the pole replacement and the costs incurred were due to the relocation and burial of the cables, not the pole replacement.

Staff believes that BellSouth was correct in the amounts assessed for services. Staff believes that there were no violations of the Public Service Commission's rules and regulations and recommends that the Commission find that BellSouth properly charged Karl Amsler and Sonny Stewart for special construction costs for a facilities rearrangement consistent with BellSouth's approved tariff.

**Issue 2:** Did BellSouth complete all of the work as charged for the facilities rearrangement?

**Recommendation:** No, BellSouth failed to remove the old anchor from the Customer's property. BellSouth should either remove the old anchor from the property or refund the Customers in the amount of \$174.51. (Plescow, Kennedy, Tan, Scott)

**Staff Analysis:** The Customers contend that the removal of the old anchor was not completed, but rather buried. Under the contract signed by both BellSouth and the Customers, removal of the guys and anchor for \$174.51 was agreed upon. In the July 7, 2005, Informal Conference, BellSouth stated that its definition of removal may include an attempt to remove but can result in burial if an anchor is located deep in the ground. BellSouth stated that in that situation, the anchor would be cut down and buried. However, the Customers provided photos of the old anchor visible on the ground and shallowly buried. BellSouth charged for removal but has failed to prove that it attempted to remove the anchor. The anchor remains because the Customers did not have the removal capability.

Staff recommends that BellSouth either remove the old anchor or refund Customers in the amount of \$174.51. Staff notes that the contracted action should result in the actual removal of the facility and not burial, because the Customers were charged for removal.

**Issue 3:** Should this docket be closed?

**Recommendation:** The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interest are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80 (13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. Staff recommends that BellSouth files within 30 days from date of issuance of consummating order, proof of removal of facilities or refund of \$174.51. After proof has been submitted, this docket should be closed administratively. (Tan, Scott)

**Staff Analysis:** At the conclusion of the protest period, if no protest is filed, a consummating order should be issued. Bellsouth has 30 days from date of issuance of consummating order to provide proof of removal of facilities or refund of \$174.51. This docket should remain until proof has been submitted and should be closed administratively.