

FLORIDA PUBLIC SERVICE Commission
Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

May 3, 1991

TO : DIVISION OF RECORDS & REPORTING

FROM : DIVISION OF LEGAL SERVICES (KURLIN) *pk* *TR*
DIVISION OF CONSUMER AFFAIRS (PRUITT) *NP*
DIVISION OF COMMUNICATIONS (NORTON) *slu* *BPP* *PA*

RE : ~~DOCKET NO. 910486-TE~~ - COMPLAINT OF GHF ASSOCIATES
AGAINST SOUTHERN BELL TELEPHONE COMPANY REGARDING THE
BILLING FOR ESSX SERVICE

AGENDA: MAY 21, 1991 - CONTROVERSIAL-AGENDA - PROPOSED AGENCY
ACTION-PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE

CASE BACKGROUND

Mr. Steven M. Gray filed a complaint against Southern Bell with the Florida Public Service Commission's Division of Consumer Affairs on January 9, 1991, questioning the validity of the billing for ESSX service for 30 lines listed for Audio Adventures and billed to GHF Associates. Mr. Gray stated that due to financial difficulty he requested that Southern Bell temporarily suspend his ESSX service for Audio Adventures, GHF Associates. He said he later received a bill for \$14,875 and was informed that Southern Bell does not suspend, only terminates ESSX service. Mr. Gray stated that had he been told the suspension was not an option he would have continued the ESSX service.

A report submitted by Southern Bell to the Florida Public Service Commission on January 21, 1991, advised that Mr. Gray contacted Southern Bell on March 26, 1990 and placed an order to disconnect the ESSX service. Southern Bell reported that on March 28, Mr. Gray was given the estimated cost of terminating the service by Ms. Iris Gonzalez, Southern Bell Service Consultant, and on March 29, Ms. Gonzalez gave him the exact cost of terminating the contract. The disconnect order was issued on March 30, 1990.

On January 31, 1991, Public Service Commission Consumer Affairs Staff wrote Mr. Gray sustaining the charges by referring

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to the Southern Bell tariff A12.1.2 which states "...suspension of ESSX service is not permitted." Staff also referred Mr. Gray to his contract regarding payments due Southern Bell should ESSX service be terminated prior to the expiration of the contract.

On February 7, 1991 Mr. George Hanna, Director, Division of Consumer Affairs, received a written request from Mr. Gray for an informal conference.

An informal conference, pursuant to Commission Rule 25-22.032(4), was conducted by staff at the Miami District office of the Florida Public Service Commission on March 25, 1991. At the informal conference Mr. Gray stated that due to financial difficulties and technical problems he had requested a suspension of ESSX service. He further stated that he was not informed that suspension was not allowed and that his request would result in the termination of his ESSX service and the subsequent billing for the termination charges.

Mr. Gray stated that to prevent disconnection of his business lines he agreed to payment arrangements on the ESSX bill, but he was unable to keep the arrangements.

Southern Bell provided the Commission with a sworn affidavit from Iris Gonzalez, Service Consultant, South Florida Marketing Department, stating that she had contacted Mr. Gray on March 29, 1990 regarding his request to Southern Bell that his ESSX service be terminated and reminded him that termination charges would apply. She stated that at no time was a request for suspension of service made by Mr. Gray.

Southern Bell provided the Commission with a copy of the ESSX service contract signed on March 29, 1989 by Mr. Gray. During the informal conference, section 5 of the contract which prohibited suspension of service and section 4 which referred to the application of termination charges should the service be terminated prior to the expiration of the contract were reviewed.

Mr. Gray stated that he was not informed when ordering the ESSX service that it was available on a month to month basis. He stated that he would have preferred this method rather than a two year contract.

Southern Bell responded that it had no documentation regarding the offering of the monthly option, but that service was less expensive under the contract. The monthly rate of the contract was \$790.63 and the monthly rate without a contract was \$1,076.58.

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Mr. Gray stated that to continue as a business, he employed John Fritzgibbon as a business agent who obtained two telephone lines. Mr. Gray objected to the transfer of the bill of Audio Adventures, GHF Associates, to this account.

Southern Bell reported that in March 1990, Mr. Gray had requested a transfer of calls from the Audio Adventure service to the new service of John Fritzgibbon.

Southern Bell records showed the account in question of John Fritzgibbon (567-1578) as having the listed name of Telepay and an additional listing for Steven M. Gray (567-1801). Southern Bell addressed this point during the informal conference by stating that the stationery used by Mr. Gray also carried the number 567-1578. Both numbers are at the same address. Southern Bell stated that on October 25, 1990 Mr. Gray was contacted at 567-1578 and informed that the outstanding charges would be transferred to his other working telephone service of 567-1578. Southern Bell stated that Mr. Gray agreed to this transfer. During the informal conference of March 25, 1991 Mr. Gray said this was his current business number.

Mr. Gray also stated that a \$1,000 payment to Southern Bell made on March 5, 1990 at Sears was not credited. The \$1,000 payment Mr. Gray made on March 5, 1990 was credited to Mr. Gray's account and this was reflected in the bill of March 11, 1990.

Mr. Gray failed to provide any evidence supporting his statements that he had objected to the termination of service on March 30, 1990. He requested that he be refunded \$15,197.89, including \$1,000 which he stated had not been credited by Southern Bell, and that he be granted relief from the charges billed after the termination of service.

Rule 25.22.032(8) FAC, requires the Commission to dispose of this matter by issuing a notice of proposed agency action, or by setting it for hearing pursuant to Section 120.57, Florida statutes. A notice of proposed agency action should be issued, which will still afford the parties the opportunity to request a hearing under Section 120.57, F.S.

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DISCUSSION OF ISSUES

ISSUE NO. 1: Did Southern Bell act properly in terminating the ESSX service of GHF Associates (Audio Adventures, Steven M. Gray)?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Mr. Gray signed a contract on March 29, 1989 which included the provisions that the ESSX service could not be suspended. Southern Bell tariff A12.1.2(L) also prohibits suspension of ESSX service. Southern Bell written reports and the sworn affidavit of Iris Gonzalez state the customer was contacted on March 29, 1990 and the customer's request for disconnection of the ESSX service was verified.

ISSUE 2: Was GHF Associates, Audio Adventures, responsible for the payment of termination charges upon disconnection of the ESSX service?

RECOMMENDATION: Yes.

STAFF ANALYSIS: The contract signed by Mr. Gray states that termination charges would apply if the service was disconnected prior to the expiration of the contract. Southern Bell tariff A12.1.6(C)(2) provides for termination charges for equipment or facilities disconnected prior to the expiration of the payment period. Tariff A12.1.6(E)(g)(2) provides that deferred charges (i.e. installation charges) must be paid in full if service is disconnected prior to the expiration of the selected deferral period. Mr. Gray is responsible for the payment of the termination charges. The customer's final bill of \$12,774.33 included \$9,980.81 in termination charges, current service charges and a past due balance of \$2,495.04. Mr Gray made four payments totalling \$4,524.33. He is responsible for the balance due of \$8,273.75.

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ISSUE 3: Was the balance of the outstanding charges properly transferred to 305-567-1578?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Mr. Gray admitted that he had Mr. John Fritzgibbon, an employee, establish two telephone lines in the same business location in order for Mr. Gray to continue operations. Southern Bell records indicate that Mr. Gray requested on March 30, 1990 that calls to his ESSX service be referred to the new account of Mr. John Fritzgibbon which was listed as Telepay, 305-567-1578 with a second listing for Steven M. Gray at 567-1801. On April 3, 1990 Mr. Gray reported a problem with the reference of calls which was corrected. On May 11, 1990 Mr. Gray sent a letter to Southern Bell outlining the payment plan for the termination charges. The letter was on Gray and Company stationary with the Telepay 567-1578 number. In October 1990 Southern Bell sent Mr. Gray a letter stating that the outstanding charges of \$8,273.75 for Audio Adventures were being transferred to his present working service, 567-1578.

ISSUE 4: Should the Commission grant Mr. Steven Gray a refund of the payments made for the ESSX service and elimination of the termination charges?

RECOMMENDATION: No, Mr. Gray should not be granted the relief he seeks.

STAFF ANALYSIS: Mr. Gray contends that the termination of the ESSX service was executed without his knowledge or consent because he stated that he ordered a suspension. Mr. Gray has provided no documentation that he protested the termination of his ESSX service at the same time or protested the billing of the termination charges until they were transferred to his current service. Mr. Gray should not be granted a refund of payments made for service provided nor should termination charges, including the pro-rated installation costs, be eliminated.

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ISSUE 5: Should this docket be closed?

RECOMMENDATION: If no substantially affected person files a timely protest to the Commission's proposed agency action, this docket should be closed.

STAFF ANALYSIS: If no substantially affected person files a timely request for a Section 120.57, F.S., hearing within twenty-one days, no further action will be required and this docket should be closed.