

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint of Harold) DOCKET NO. 931062-TL
Durel against BellSouth) ORDER NO. PSC-93-1841-FOF-TL
Telecommunications, Inc. d/b/a) ISSUED: December 28, 1993
Southern Bell Telephone and)
Telegraph Company regarding)
charges for residential service)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER DISMISSING COMPLAINT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

Pursuant to an oral complaint at a hearing and a subsequent complaint taken telephonically, on March 1, 1993, the Staff of this Commission initiated an inquiry into the telephone service provided to Mr. Harold Durel by BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell). Mr. Durel alleged that he had had service problems, including difficulty hearing incoming calls, and static on outgoing calls, for several months. Mr. Durel stated that these problems had gotten better but had not been totally rectified. Mr. Durel further informed Staff that Southern Bell had issued a credit of \$420 for time out of service.

On March 11, 1993 Southern Bell provided a report on the repair calls made on Mr. Durel's service. According to the report, Mr. Durel's service was installed on October 20, 1992. At that time, the aerial service pair was replaced.

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FPSC-RECORDS/REPORTING

On December 2, 1992, Mr. Durel reported an echo on his line. On December 3, 1992, Southern Bell tested the line and found it to be working properly. On January 27, 1993, Mr. Durel reported that he was not able to send data. On January 29, 1993, AT&T Communications of the Southern States, Inc. (AT&T) reported noise on Mr. Durel's line. On January 30, 1993, a technician repaired the buried service wire.

On February 4, 1993, AT&T requested that Southern Bell check Mr. Durel's line to the demarcation point. A technician tested the line that same day and found no trouble at the demarcation point. On February 9, 1993, AT&T requested a trouble history on Mr. Durel's service. On February 11, 1993, a Southern Bell technician checked transmission levels on the line and found them to be satisfactory.

On February 12, 1993, Mr. Durel reported that his line had no dial tone, that he could not call out, and that he was not receiving incoming calls. A technician came out the next day but could not gain access. On February 16, 1993, AT&T again asked Southern Bell to check the line. A technician and a supervisor were dispatched on February 17 to check the lines. They could not find any trouble on the line. On March 1, 1993, Mr. Durel reported no dial tone. A technician could find no problem on the line.

Since there was no indication that Mr. Durel's alleged problems were the result of Southern Bell's facilities or service, and since it appeared that Southern Bell was working in good faith to resolve the problems, Staff closed the inquiry.

On May 13, 1993, Southern Bell advised Staff that it was continuing to monitor Mr. Durel's service and that it had not found any problem with its equipment or lines. Southern Bell also informed Staff that Mr. Durel had made no payments since the service was initiated in October, 1992.

By letter dated June 24, 1993, Staff informed Mr. Durel that, since no problems could be found with Southern Bell's facilities, the Commission had no basis to require Southern Bell to make any further adjustments to his bill. On July 9, 1993, Mr. Durel requested an informal conference.

Informal Conference

Staff held an informal conference on August 17, 1993, in Royal Palm Beach. Both at and subsequent to the informal conference, Mr.

Durel presented a number of letters, computer bulletin board messages, and news clippings that he believed illustrated his service problems. The letters were from associates of Mr. Durel who had problems reaching him by telephone. Mr. Durel also alleged that, when Southern Bell repaired the buried service wire, it damaged part of his sprinkler system. Mr. Durel originally asked that Southern Bell reimburse him \$2,600 for the alleged damage; however, he later reduced his claim to \$950.

Southern Bell argued that, since it was never able to find any problem with its facilities or equipment, with the exception of its repair of the buried service wire on January 30, 1993, no further bill adjustments should be made. As for Mr. Durel's sprinkler system, Southern Bell claimed that the damage was repaired on the spot by the contractor, but offered to repair any damage that may still exist itself.

The informal conference failed to resolve Mr. Durel's complaint.

Mr. Durel's Complaint

On August 26, 1993, Southern Bell installed two maintenance termination units (MTUs) on Mr. Durel's lines. These MTUs help isolate service problems. On September 13, 1993, Southern Bell provided a letter stating that, notwithstanding four more complaints by Mr. Durel, the MTUs have found no problems. Southern Bell states that the MTUs will stay in place for an indefinite period of time to monitor his service.

On October 14, 1993, Southern Bell submitted a report on the practices and methodology of tests performed on Mr. Durel's line. According to Southern Bell, between the time that Mr. Durel's service was initiated in October, 1992, and September 22, 1993, the transmission levels at the network interface at Mr. Durel's service have been tested, by one method or another, a total of 27 times. The transmission levels have been proper each time.

Although Mr. Durel may have had experienced problems with his telecommunications services, he has provided no tangible evidence that the fault lies with Southern Bell's equipment. On the other hand, Southern Bell has provided credible evidence that any problems that may exist are not the result of any deficiency in its equipment or facilities. Accordingly, we cannot say that Southern Bell is at fault.

Bill Adjustments

In March of 1993, Southern Bell adjusted Mr. Durel's account by \$422.47 for service between October, 1992, and February, 1993. Southern Bell argues that these adjustments were made in the interest of customer relations, not because it believed that anything was wrong with Mr. Durel's service. Since we have already determined that there is no verifiable proof that Southern Bell's facilities are at fault, we do not believe that it would be appropriate to require any further adjustment.

Damages to Sprinkler

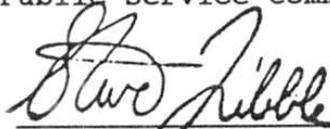
Pursuant to Chapters 350 and 364, Florida Statutes, this Commission has exclusive jurisdiction over telecommunications common carriers with respect to their authority, rates, and service. While we have the authority, under proper circumstances, to require refunds or impose regulatory penalties, we have no jurisdiction to award damages. If Mr. Durel believes that Southern Bell is responsible for damages to his sprinkler system, the appropriate remedy is for him to file an action in County or Circuit Court.

It is, therefore,

ORDERED by the Florida Public Service Commission that the complaint of Mr. Harold Durel against BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company is dismissed. It is further

ORDERED that, unless a person whose interests are substantially affected by the action proposed herein files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, this Order shall become final and this docket shall be closed on the following date.

By ORDER of the Florida Public Service Commission, this 28th day of December, 1993.



STEVE TRIBBLE, Director
Division of Records and Reporting

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 18, 1994.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.