BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of R&D Marketing against UNITED TELEPHONE COMPANY regarding improper handling of long distance carrier service.	)	DOCKET NO. 911218-TL
	)	ORDER NO. 25741
	)	ISSUED: 2/17/92

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER RESOLVING COMPLAINT OF R & D
MARKETING AGAINST UNITED TELEPHONE COMPANY

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.

On September 23, 1991, Mr. Dennis Card of R&D Marketing (R&D) filed a complaint against United Telephone Company (United or the Company) with our Division of Consumer Affairs. The complaint concerned a discrepancy in long distance billing charges. Mr. Card stated that R&D selected MCI as its primary long distance carrier. United connected R&D Marketing to AT&T's network, and billed R&D according to AT&T's rates.

In a report dated October 3, 1991, United advised Consumer Affairs that Mr. Robert Drazen, owner of R&D, had selected AT&T as his long distance toll carrier when he applied for service on August 2, 1991. United believed it acted properly and in accordance with the customer's wishes in the handling of R&D's account. Though R&D was connected to MCI's network on September 4, 1991, United stated that no adjustments to MCI rates would be forthcoming for the period from August 10, through September 4.

Based on its investigation, our staff advised the customer on October 9, 1991, that it appeared United did not mishandle the account. In a letter to the Commission dated November 7, 1991, Mr. Drazen requested an informal conference, as he disputed our staff's initial findings in favor of United. The conference was held on

December 9, 1991, in the Commission's Orlando office. No settlement was reached.

While United asserts that Mr. Drazen contacted its business office on August 2, 1991, and requested AT&T as his primary carrier for the twenty-five lines R&D was have installed on August 10. Mr. Drazen stated to our staff that he planned to have Intex, a reseller of MCI, for his long distance service. He contends that he specifically instructed United to connect him to MCI, as Intex had advised him to do.

Under normal United procedure, customers are mailed a letter of confirmation concerning the carrier selection. Mr. Drazen stated that he never received such confirmation, and that if he had, he would have immediately known that he was with the wrong carrier. United stated that the letter was sent, although it has been unable to locate a file copy of the letter. Mr. Drazen suggests that this is an indication that the account was mishandled. United did have a copy of the service order which shows AT&T as R&D's carrier of choice. Had a confirmation letter been sent, it would have been generated from this service order, and shown AT&T as the carrier. We conclude that there is no way to ascertain whether the letter was sent.

On August 28, United asserts that it received a call from an MCI representative who stated that MCI should be R&D's primary carrier, and not AT&T. United informed this representative that it would first have to contact R&D to confirm the change of carriers. United then called R&D and spoke with the manager, Dennis Card. According to the Company, Mr. Card told United that there was no authorization to switch carriers to MCI from AT&T. He further stated, according to United, that he did not want his carrier changed, as he was "still considering several carriers." Mr. Card has disputed this conversation, stating to our staff that he believed he had been with MCI all along.

United records indicate that Mr. Card called the Company on September 3, to verify R&D's long distance carrier. When told that R&D was still with AT&T, Mr. Card said the carrier was incorrect and requested that it be changed to MCI. The change was completed the next day.

Though R&D was connected with AT&T's network from August 10, through September 4, its service with AT&T was modified on August 27, from the regular rate to the discounted PROWATS service. Records indicate that Mr. Card called AT&T on August 27, to inquire about its calling plans, and was referred to Ron Chapman, AT&T's

Florida representative. United has reported that, according to AT&T, Mr. Card selected an optional calling plan (PROWATS) and also requested information about AT&T's T1 Megacom, a type of discount outbound service plan for high toll usage. Mr. Card denied this, stating that he only had inquired about the T1 plan. Mr. Card contends that Mr. Chapman admitted that "there was a misunderstanding and a mistake made."

Our staff has spoken to Mr. Chapman at AT&T. He stated that there was no misunderstanding or mistake. Mr. Chapman confirmed that there was no doubt that Mr. Card knew R&D was with AT&T on August 27. He recalled that he thanked Mr. Card for using AT&T service, then pointed out he would like to put R&D on PROWATS, as the price would be substantially lower than the rate R&D was currently paying. Mr. Chapman stated that Mr. Card agreed to this because R&D's bills were high and he needed to do something about it. Mr. Chapman confirmed that Mr. Card did ask about T1 Megacon, but Mr. Chapman asserts that he explained that it would take a month to get the service in place, and PROWATS would be better in the interim. Mr. Chapman asserts that Mr. Card never mentioned that he was with MCI and that there was no misunderstanding that R&D was being placed on PROWATS rather than AT&T's regular service.

At the conference, Mr. Drazen produced a copy of a service agreement between R&D and Intex which was dated August 8, 1991. Intex did not forward this agreement to MCI until August 26, 1991, and on August 28, 1991, MCI contacted United about switching R&D over. Though United doesn't doubt that Mr. Drazen had been in touch with Intex, the Company maintains that it was never made aware of the relationship until it received MCI's August 28, 1991, request.

While United and R&D have disputed each other's statements, we find that the greater weight of evidence shows that United did not mishandle the account. Records from MCI and AT&T support the finding that the account was not mishandled.

As originally billed, R&D was charged $1,294.38 for local United service, and $11,693.67 for AT&T long distance, for a total of $12,988.05. R&D argues that it only owed 40% of the long distance charges, due to the difference in the Intex and AT&T rates. Therefore, an agreement was made for R&D to pay its local service in full plus 40% of the long distance toll charges for a payment of $5,971.84 as an undisputed amount. The disputed balance of $7,016.21 would be settled by this Commission. Upon review, we find that the amount in dispute represents actual long distance

usage which was properly billed by United but unpaid by R&D. Thus, we find that the disputed $7,016.21 is owed by R&D to United.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that United Telephone Company properly handled R&D Marketing's account. It is further

ORDERED that R&D owes the disputed $7,016.21 to United. It is further

ORDERED that if no timely protest is filed the docket shall be closed at the end of the proposed agency action protest period.

By ORDER of the Florida Public Service Commission, this 17th day of FEBRUARY, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

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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 3/9/92.

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.