

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

M E M O R A N D U M

October 3, 1991

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF LEGAL SERVICES [KURLIN] *pak of H W*
DIVISION OF COMMUNICATIONS [NORTON] *rbu APB*

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

AGENDA: OCTOBER 15, 1991 - CONTROVERSIAL - PARTIES MAY
PARTICIPATE

CRITICAL DATES: NONE

CASE BACKGROUND

On January 9, 1991, Mr. Steven M. Gray of GHF Associates filed a complaint against Southern Bell Telephone and Telegraph Company questioning the validity of the billing for ESSX service for 30 lines listed for Audio Adventures and billed to GHF Associates. By Order No. 24654, issued June 11, 1991 (Attachment 1, pages 4-8), the Commission denied Mr. Gray's complaint. The proposed agency action required a response by July 2, 1991. On July 3, Mr. Gray's Petition for Formal Proceeding was received. On July 15, we received Mr. Gray's Motion to Move Petition out of Time.

By Order No. 24791, issued August 26, 1991 (Attachment 2, pages 9-11), the Commission denied Mr. Gray's Motion to Move out of Time; thus, denying his Petition for Formal Proceeding as untimely filed. On September 12, 1991, the Division of Records and Reporting received a letter from Mr. Gray, which amounts to a motion for reconsideration. This recommendation addresses that filing.

DOCUMENT NUMBER-DATE

09803 OCT -3 1991

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Mr. Gray's Motion for Reconsideration?

RECOMMENDATION: No. The Commission should not grant Mr. Gray's Motion for Reconsideration.

STAFF ANALYSIS: Pursuant to Rule 25-22.060, Florida Administrative Code, any party adversely affected by an order of the Commission may file a motion for reconsideration of that order. The motion must be filed with the Division of Records and Reporting within 15 days of the issuance of the order. Since Order No. 24791 was issued on August 26, 1991, the motion for reconsideration should have been filed by September 10, 1991. The Division of Records and Reporting received a letter from Mr. Gray on September 12, 1991 (Attachment 3, page 12). Staff believes that this letter is the equivalent of a motion for reconsideration.

When the Commission voted to deny Mr. Gray's original complaint, and the proposed agency action Order No. 24654 was issued, Mr. Gray filed an untimely protest. Commission practice and procedure regarding filing times was explained to Mr. Gray by members of both the records and reporting and legal staffs. Mr. Gray could have attended the May 21, 1991 agenda conference where the Commission voted to deny his complaint, or the August 6, 1991 agenda conference, at which the Commission voted to deny his petition to move the late filed protest out of time. Mr. Gray did not attend either agenda conference. When the final order was issued in this docket, Mr. Gray again filed an untimely motion.

Staff believes that Mr. Gray has been given adequate notice of the rules governing Commission procedures. Both Order No. 24654 and Order No. 24791 contained specific filing guidelines in the notice paragraphs. Additionally, Mr. Gray has been free to attend all proceedings in this docket.

Staff believes that the filing requirements are clear. Rule 25-22.060(3)(a) provides that a motion for reconsideration of a final order must be filed within 15 days of the issuance of the order. Therefore, staff concludes that the Commission should deny Mr. Gray's motion for reconsideration as untimely filed.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed.

STAFF ANALYSIS: If the Commission adopts staff's recommendation in Issue 1, this docket should be closed.

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