

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of the continued ) DOCKET NO. 951334-TI  
oversight of earnings regulation ) ORDER NO. PSC-95-1582-FOF-TI  
of AT&T Communications of the ) ISSUED: December 22, 1995  
Southern States, Inc. and d/b/a )  
Connect 'N Save, as required in )  
Order No. PSC-92-0572-FOF-TI. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION

ORDER ELIMINATING CERTAIN REGULATORY  
REQUIREMENTS FOR ATT-C

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

In the course of the divestiture of the Bell Operating Companies from AT&T Communications, Inc., AT&T became a separate entity from the Bell System. AT&T Communications of the Southern States, Inc. (ATT-C or Company) is a wholly owned subsidiary of AT&T Communications formed by AT&T to provide intrastate toll service. In conjunction with the Commission's certification of ATT-C as an interexchange carrier (IXC), the Commission deemed ATT-C to be the dominant IXC. ATT-C's status as the dominant IXC caused the Commission to subject the Company to a more comprehensive regulatory scheme than accorded other IXCs. By Order No. 12788, we determined that ATT-C would be subject to rate of return regulation. Because a rate base had not been established for ATT-C, the Company's rates were set at the level then in

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existence for Southern Bell. In addition, ATT-C was subject to the same regulatory rules as the local exchange companies (LECs).

Over time, as competition has developed in the interexchange market, this Commission has on successive occasions reduced the level of regulatory oversight of ATT-C to more closely match the level of regulation with the competitive conditions for IXCs. The relaxation of regulation has been accomplished through a series of reviews of ATT-C's actions and its ability to exert market power.

By Order No. 16180, we granted ATT-C tariff flexibility to change MTS and WATS rates within specified bands. The upper limit of the bands for each service was the then existing rates and the floor was switched access charges, including the charges for billing and collection.

By Order 19758, we determined to forbear from traditional rate base regulation for ATT-C for a trial period of two years. We continued to allow changes to MTS and WATS rates between the caps and floors subject to all tariff filing requirements, uniform statewide rates, and carrier of last resort responsibilities. In addition, we modified or waived requirements for rate cases, depreciation reports, and surveillance reports.

We gathered data over a two year period from June, 1988 through July, 1990, to evaluate whether to further alter our regulation of ATT-C. Realizing that additional time was needed to evaluate the information, we extended the experiment through December 1991. See Order No. 23186. After hearing, we determined that further relaxation of regulatory oversight of ATT-C was appropriate. We also set another review date for ATT-C's activities for no later than January 1, 1996. See Order No. PSC-92-0572-FOF-TI.

As a result of the extended oversight period and the newly enacted changes to Chapter 364, Florida Statutes, and consistent with our commitment to review ATT-C again before January 1, 1996, we herein conduct our next review of ATT-C. Notwithstanding our prior relaxation of regulation, there are still four areas that still differentiate our treatment of ATT-C from other IXCs: 1) rate caps, 2) supporting documentation for tariff filings, 3) statewide average rates, and 4) semi-annual MOU report. As discussed in detail below, we finally find it appropriate to remove the last vestiges of our treatment of ATT-C that are different from our treatment of other IXCs. We note that our determination herein is consistent with our proposed changes to Chapter 25-24, Florida Administrative Code, to remove the major IXC status for ATT-C from our rules.

## II. AREAS FOR REVIEW

As noted above there are four areas in which our treatment of ATT-C is different from our treatment of the other IXCs. Our discussion of each is set forth below.

### A. RATE CAPS

ATT-C is currently subject to rate caps. The matter of continuing rate caps for ATT-C remains from the forbearance proceeding. By Order No. PSC-92-0572-FOF-TI we retained rate caps for ATT-C's MTS rates. No carrier other than ATT-C is required to maintain rate caps.

Rate caps have played an integral role in the pricing of toll service by the non-LEC pay telephone (NPATS) providers and the alternative operator service (AOS) providers. By Order No. 14132, we initially set the maximum amount NPATS providers could charge for intrastate toll calls at ATT-C's then-current caps. These caps were both time-of-day and distance sensitive. We note that we have now amended Rule 25-24-516, Florida Administrative Code, to disassociate NPATS toll rates from ATT-C's MTS caps and to set the rate cap for NPATS at a maximum of \$.25 per minute, regardless of time-of-day or distance. AOS providers, however, are still precluded from charging more than ATT-C's rates for operator services as specified in Order No. 22243. As we did with NPATS, we are presently evaluating whether to disassociate the AOS cap from ATT-C's rates.

### B. ADDITIONAL FILING INFORMATION

ATT-C is required to file an explanation of each new service offering and the type of market segment being targeted. This tariff filing requirement is not demanded of any other IXCs. In practice, it appears that information provided expressly to comply with this requirement duplicates information provided in the first paragraph of the tariffs that are filed.

### C. STATEWIDE AVERAGE RATES

When ATT-C came into existence after divestiture, the Company adopted Southern Bell Telephone and Telegraph Company's Florida tariffs for intrastate interLATA MTS services. At that time, Rule 25-4.034, Florida Administrative Code, contained a provision requiring all LECs to have statewide uniform toll rates. Because ATT-C was the dominant IXC, and because the Company was the only carrier serving large parts of the state, the statewide average rate requirement was also made applicable to ATT-C. This was

intended to preclude ATT-C from charging low prices in competitive areas and charging higher prices in areas where competition was insufficient to act as a check on ATT-C's pricing behavior. The uniform statewide average rate requirement was not imposed on other IXCs.

Through our successive reviews, we have continued the uniform statewide average rate requirement for ATT-C's MTS rates. We note that uniform average rates are useful where competition is limited. Uniform average rates do not generally make sense in competitive markets because the provider cannot respond to market and cost differences. In a competitive market, uniform average rates deny consumers the benefits of the competitive marketplace because companies cannot respond to differing demand characteristics and suppliers. Moreover, uniform average rates preclude an entity from more closely matching prices for services to the respective costs.

C. LEC REPORTED IXC MINUTES OF USE

As part of our ongoing review of ATT-C, we viewed switched access MOUs as an important measure of the level of competition experienced by ATT-C within the long distance markets. Access MOUs are used as a measure of ATT-C's market share. No evaluation of MOUs, or any other measure of market share, is performed for other IXCs. These MOUs are gathered from and reported by the LECs semi-annually.

III. CONCLUSION

Upon consideration of the above, it now appears that the time has come to remove the last vestiges of regulatory treatment that differentiates ATT-C from the other IXCs. It appears that the long distance market is sufficiently competitive that ATT-C will not be able to improperly use its market power. Accordingly, any obligation imposed on ATT-C and not imposed on the other IXCs should be eliminated. Specifically, the rate caps on ATT-C's MTS service as well as the additional information required to be filed by ATT-C that is not required of the other IXCs is hereby eliminated. ATT-C shall be free to offer deaveraged rates, if it so chooses, as long as they are not unduly discriminatory. In addition, the LECs are hereby relieved of the requirement to file IXC originating MOU reports. All of these actions are consistent with our elimination of the "major/minor" distinction in our rules for IXCs.

Elimination of the rate caps is appropriate due to the lessened ability of ATT-C to dominate the market. With the level of competition in the long distance market, price caps are no longer appropriate.

The elimination of uniform statewide average rates is supported by two events. First, the 1995 amendments to Chapter 364, Florida Statutes, have dramatically altered the telecommunications regulatory framework for LECs that elect price regulation. Price regulated companies are afforded substantial pricing flexibility, including the ability to deaverage rates on a geographic basis. Second, we have consistently recognized that the IXCs' markets are highly competitive, especially the toll market. We note that we have already begun to allow ATT-C to deaverage its toll rates to match BellSouth's toll rates. Further, the new statutory authority of LECs to deaverage rates, and the legislative predilection for increased competition, makes it appropriate to eliminate uniform rates as a barrier to ATT-C for competition with the LECs. However, we would also note that our decision here should not be construed as granting ATT-C blanket authority to deaverage rates for other than purely competitive purposes. ATT-C is still subject to the general nondiscrimination provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that regulatory requirements imposed on AT&T Communications of the Southern States, Inc. and d/b/a Connect 'N Save, that are not imposed on other interexchange carriers are hereby eliminated as described in the body of this Order. It is further

ORDERED that all local exchange companies are relieved from filing semiannual reports detailing ATT-C's switched access minutes-of-use. It is further

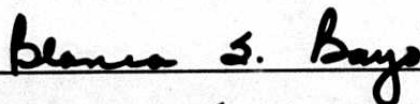
ORDERED that this Order shall become final and effective unless an appropriate petition is filed in accordance with the "Notice of Further Proceedings or Judicial Review" as set forth below. It is further

ORDERED that in the event this Order becomes final, this Docket should be closed.



ORDER NO. PSC-95-1582-FOF-TI  
DOCKET NO. 951334-TI  
PAGE 6

By ORDER of the Florida Public Service Commission, this 22nd  
day of December, 1995.



BLANCA S. BAYÓ, 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 12, 1996.

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.

ORDER NO. PSC-95-1582-FOF-TI  
DOCKET NO. 951334-TI  
PAGE 7

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 substantially 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.