

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

April 2, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (MUSSELWHITE)¹⁵⁵
DIVISION OF LEGAL SERVICES (COX, STOVER) *WPC* *140*

RE: DOCKET NO. 970075-TI - AT&T COMMUNICATIONS OF THE
SOUTHERN STATES, INC. - PETITION FOR PARTIAL WAIVER OF
RULE 25-4.113(4), F.A.C., BY AT&T COMMUNICATIONS OF THE
SOUTHERN STATES, INC., IN ORDER TO ALLOW IT TO OFFER
COMBINED BILLING SERVICE TO CUSTOMERS UPON REQUEST.

AGENDA: APRIL 14, 1997 - REGULAR AGENDA - PROPOSED AGENCY ACTION
-INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: APRIL 15, 1997

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\970075TI.RCM

CASE BACKGROUND

On January 15, 1997, AT&T Communications of the Southern States, Inc. (AT&T or the Company) filed a petition for partial waiver of Rule 25-4.113(4), Florida Administrative Code, Refusal or Discontinuance of Service by Company. AT&T is seeking a partial waiver of this rule in order to allow it to offer a combined billing option for its long distance customers who also subscribe to service from AT&T Wireless. The Notice of Petition for Waiver was submitted to the Secretary of State for publication in the Florida Administrative Weekly January 29, 1997. No comments were submitted during the comment period, which ended March 10, 1997. The statutory deadline for the Commission's decision regarding this petition is April 15, 1997.

DOCUMENT NUMBER-DATE

03354 APR-25

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant AT&T's petition for a waiver from the provisions of Rule 25-4.113(4)(e), Florida Administrative Code, which prohibits telephone companies from discontinuing service to a customer failing to pay for a company's service which is not regulated by the Commission?

RECOMMENDATION: Yes. Staff recommends that AT&T's request for a waiver of Rule 25-4.113(4)(e) should be granted, thus allowing AT&T to disconnect long distance service to customers who fail to pay the combined balance on a bill containing charges for both long distance and wireless services. Further, staff recommends that AT&T be ordered to notify customers prior to their election of combined billing that it is purely an option to separate billing.

STAFF ANALYSIS: Rule 25-4.113, Florida Administrative Code, specifies conditions under which local exchange companies may and may not discontinue service to their customers. This rule is applied to interexchange companies by Rule 25-24.490, Florida Administrative Code, which expressly incorporates Rule 25-4.113, and thus controls an IXC's ability to discontinue service to its customers. Rule 25-4.113(4)(e) provides as follows:

(4) The following shall not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer:

(e) Failure to pay for a service rendered by the company which is not regulated by the Commission.

AT&T is seeking a waiver of Rule 25-4.113(4)(e), Florida Administrative Code, to allow the Company to disconnect both landline long distance and wireless service to individuals who elect combined billing and fail to pay the entire combined landline long distance and wireless balance.

AT&T proposes to offer its long distance customers who also subscribe to service from AT&T Wireless and who are directly billed by AT&T, the option of receiving a combined bill for the two services. In order to provide this option, AT&T would bill and collect wireless service charges on behalf of AT&T Wireless.

The combined billing arrangement would be an option for customers who desire to receive one bill for both services, instead of two bills. Customers electing the combined billing option would receive one monthly statement, which would include separately-

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itemized landline long distance and wireless charges. These subtotals would be combined into a single balance, which customers would pay with a single check. Customers would not be charged for combined billing.

Customer payments received under the combined billing option would be applied to the total balance on the combined statement. Failure to pay all or part of the bill would result in disconnection of both services, even if the amount of the partial payment otherwise would be sufficient to cover either the landline long distance or wireless charges. Therefore, once a customer requests the combined billing option, the landline long distance and wireless charges would be treated as a single balance that must be paid in full or the account would be considered delinquent by both providers.

AT&T has stated that if a customer wants to return to separate billing they would be able to do so. In a letter dated February 10, 1997, AT&T responded to staff's question regarding when a customer who elected combined billing would be able to return to separate billing. AT&T responded:

If a customer requests to be returned to separate billing, AT&T would process this change immediately. The customer would most likely be returned to separate billing by the next billing cycle (depending on at what point within the billing cycle the request is made). When the customer reverts to separate billing, existing balances will not be transferred to the separate bills; however, any new usage will be billed separately.

Staff believes that these guidelines for reverting customers to separate billing are reasonable. It should be noted that once the customer chooses separate billing, and the outstanding combined bill is paid in full, the customer will receive separate bills and will only be disconnected from the individual landline long distance or wireless service that he or she fails to pay.

While under the combined billing arrangement, a customer who has been disconnected because of nonpayment of the combined bill may request to be reconnected to either the landline long distance or the wireless service. AT&T stated:

...this resolution would be done on a case-by-case basis, depending on the customer's payment history and ability to pay. AT&T

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always attempts to work with its customers if they are unable to pay and if they are agreeable to a payment arrangement in order to reinstate service. AT&T prefers to remain flexible when handling these situations.

Staff agrees that AT&T should have the flexibility to work with individual customers on a case-by-case basis to reinstate service, and to work out payment terms acceptable to both parties.

AT&T also raised the issue of valid statutory authority for Rule 25-4.113, Florida Administrative Code. The statutory authority for Rule 25-4.113, F.A.C., is listed as follows:

- Section 364.03 Rates to be reasonable; performance of service; maintenance of telecommunications facilities
- Section 364.19 Telecommunications service contracts; regulation by commission
- Section 427.704 Powers and duties of the commission (relates to implementation and oversight of telecommunications relay system)

AT&T states that the Commission must rely upon the authority granted in Section 364.03, Florida Statutes, as the "general service regulatory authority" for Rule 25-4.113. According to Section 364.337(2) and (4), Section 364.03 does not apply to ALECs or IXC's. Similarly, under Section 364.051(1)(c), Section 364.03 no longer applies to price-regulated LECs. Thus, AT&T argues that application of Rule 25-4.113 to ALECs, IXC's, or price-regulated LECs would "constitute an invalid exercise of delegated legislative authority under Section 120.52(8), Florida Statutes." AT&T further states:

Given the lack of statutory authority for enforcement of Rule 25-4.113, F.A.C., as to ALECs, IXC's and price-regulated LECs, a waiver of the rule is not strictly necessary. In an abundance of caution, however, AT&T prefers to seek an explicit waiver of the requirement.

Staff strongly disagrees with AT&T's argument that Rule 25-4.113 is solely governed under the authority granted in Section 364.03, Florida Statutes. The Commission's authority for Rule 25-4.113, Florida Administrative Code, is also granted in Section 364.19, Florida Statutes, which states:

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The commission may regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons.

Therefore, under the authority granted in Section 364.19, Florida Statutes, the Commission has complete authority governing Rule 25-4.113, Florida Administrative Code. It should be noted that AT&T interprets service contracts to mean Contract Service Arrangements; however, staff believes that tariffs and any other company information stating terms and conditions to customers constitute service contracts.

Staff agrees with AT&T that granting the waiver encourages telecommunications competition, and consumer choice and convenience. AT&T stated that Section 364.01(4)(b), Florida Statutes, "directs the Commission to encourage telecommunications competition through flexible regulatory treatment to ensure a wide range of customer choice." The statute states:

(4) The commission shall exercise its exclusive jurisdiction in order to:

(b) Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.

Therefore, under the authority granted to the Commission in Section 364.19, Florida Statutes, staff recommends that the Commission grant AT&T Communications of the Southern States, Inc.'s request for the waiver of Rule 25-4.113(4)(e). Further, staff recommends that AT&T be ordered to notify customers prior to their election of combined billing that it is purely an option to separate billing. Staff also plans to open a generic rulemaking docket to remove the restriction which prevents IXCs from disconnecting long distance service for nonpayment of unregulated service.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person, whose substantial interests are affected, files a protest within 21 days of the issuance of the Order, this docket should be closed.

STAFF ANALYSIS: Yes. If no person, whose substantial interests are affected, files a protest within 21 days of the issuance of the Order, this docket should be closed.