

ORIGINAL



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January 15, 1998

Mrs. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Mrs. Bayo:

Re: DOCKET NO. 98002-11

You will find enclosed an original and fifteen (15) copies of the Rebuttal Testimony of Jerry W. Watts for filing in the above-referenced docket on behalf of AT&T.

Copies of the foregoing testimony are being served on the parties of record in accordance with the attached certificate of service.

Yours truly,

Marsha E. Rule

ACK _____

AFA _____

APP Caldwell

CAF 2

CMU 2

CTR _____

mr
Enclosures

EAG _____

LEG _____

LIN SUMF

OPC _____

RCR _____

SEL 1

WAS _____

OTH _____

DOCUMENT NUMBER-DATE

~~98002-11~~ JAN 15 8

FPSC-RECORDS/REPORTING

ORIGINAL

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

DOCKET NO. 970882-TP

REBUTTAL TESTIMONY

OF

JERRY W. WATTS

**ON BEHALF OF
AT&T COMMUNICATIONS OF THE
SOUTHERN STATES, INC.**

JANUARY 15, 1998

**DOCUMENT NUMBER-DATE
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1 through November 1996. Additionally, AT&T's complaints declined from 280 in
2 1996 to 196 in 1997 resulting in a 30% reduction in Florida. Current data
3 suggests that enforcement of the existing rules and industry initiatives are
4 reducing the number of slamming complaints.

5
6 **Q. WHAT OTHER FACTORS COULD HAVE CONTRIBUTED TO THE**
7 **INCREASE IN SLAMMING COMPLAINTS IN FLORIDA FROM 1992**
8 **THROUGH 1996?**

9 **A. There was a dramatic increase in the number of competing carriers during this**
10 **period. In 1992, there were 230 certificated interexchange carriers operating in**
11 **Florida and by 1996, the number had risen to 497. The increase in competitors**
12 **would have resulted in the following effects:**

- 13 ⇒ a substantial increase in account acquisition activity;
- 14 ⇒ more new carriers operating with less knowledge and experience in
- 15 complying with anti-slamming rules;
- 16 ⇒ increase in the number of resellers, and
- 17 ⇒ the increased likelihood of some unethical business practices by
- 18 unscrupulous carriers.

19 All of these factors would tend to increase the number of slamming complaints.
20 Moreover, the increased number of carriers would make enforcement action more
21 difficult which could also result in more complaints.

22
23 **Q. WHAT ARE YOUR CONCERNS REGARDING MR. TAYLOR'S**
24 **TESTIMONY?**

25 **A. Mr. Taylor asserts that his recommendations "balance the benefits of a**

1 competitive market with the needs of consumers to have control over their
2 telephone service." Although this is a reasonable objective, there is no indication
3 in his testimony that any cost benefit analysis has been conducted. The costs of
4 imposing new restrictive rules includes more than the direct costs to the carriers.
5 It is equally important to consider the dampening effects on both long distance
6 and local competition. FCC Commissioner Nees expressed this concern in her
7 October 14, 1997, testimony before Congress:

8
9 "...And we ask whether rules are needed to address
10 preferred carrier freezes. In a freeze, local carriers
11 get consumers to authorize the blocking of future
12 carrier changes unless the consumer gives his or her
13 written or oral consent to the blocking carrier—not
14 just to the requesting carrier.

15
16 As local competition arrives, the blocking carrier is
17 poised to compete for long distance with the
18 requesting carrier. Thus the local exchange carrier
19 may no longer be acting as a neutral third party, but
20 may have instituted freeze procedures for anti-
21 competitive reasons. In drafting our rules, we must
22 be vigilant to avoid deferring lawful competition as
23 we work to eliminate slamming...."

24
25

1
2 **Q. WHAT IS AT&T'S POSITION REGARDING THE ADDITIONAL RULES**
3 **PROPOSED BY THE PUBLIC COUNSEL'S OFFICE IN MR.**
4 **POUCHER'S TESTIMONY?**

5 **A. Mr. Poucher recommends several rule changes in addition to the changes**
6 **proposed by the Commission. AT&T opposes state rules which are inconsistent**
7 **with the FCC rules. Uniform rules across all jurisdictions will facilitate effective**
8 **enforcement and reduce confusion for customers and carriers. The following are**
9 **AT&T's specific concerns regarding Mr. Poucher's proposals:**

10
11 **Proposed Change No. 2: Upon receiving a complaint from a subscriber of an**
12 **unauthorized change of carriers, a LEC is required to:**

- 13 (a) **immediately change the customer back to the customer's original carrier,**
14 (b) **offer to freeze the customer's choice of carriers,**
15 (c) **charge back to the slamming DXC all existing billing up to 90 days or three**
16 **billing periods, whichever is longer, and credit the customer's LEC**
17 **account with the amount of the charge-back, and**
18 (d) **block the customer's account from future billing from the carrier that**
19 **caused the slam.**

20
21 **AT&T Response: Existing "no fault" agreements authorize the LEC to change**
22 **the customer back to the original carrier and charge the other carrier the applicable**
23 **change charge. Therefore, no new requirement is necessary. Taking further action**
24 **"upon receiving a complaint" and without an investigation would not be**
25 **appropriate.**

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Proposed Change No. 3: The Commission should adopt a rule stating that no carrier guilty of changing a customer's choice of carriers without knowledge or authorization should be allowed to bill or collect for any of the services provided to the customer during the period of unauthorized service up to 90 days or 3 billing periods, whichever is greater.

AT&T Response: Existing rules require the unauthorized carrier to re-rate its bill to the level that would have been charged to the customer in the absence of an unauthorized change. With this "make whole" remedy, consumers are fully insulated against exorbitant charges by another carrier in the event of an unauthorized change. Absolving such customers of all charges is unnecessary to achieve that objective. Moreover, absolution of customer charges from unauthorized carriers would eviscerate the carefully crafted private enforcement remedy provided by Congress in Section 258(b) of the Communications Act. That new statutory provision makes a carrier that violates the FCC's prescribed carrier change verification procedures liable to the subscriber's authorized carrier "in an amount equal to the charges paid by such subscriber after such violation," in accordance with rules to be adopted by the FCC. This right of action based on collected revenues rather than lost profits, as under traditional measures of damages, creates a powerful incentive for private enforcement by carriers injured by unauthorized changes of their subscribers. Absolution of these charges would remove this incentive and would discourage enforcement efforts by slammed carriers.

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