

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: PROPOSED TARIFF FILING BY AT&T) DOCKET NO. 891171-TI
 COMMUNICATIONS OF THE SOUTHERN STATES,) ORDER NO. 22197
 INC. FOR PROVISIONAL WAIVER OF RULE)
 25-24.485(1)(i) AND PERMISSION TO PROVIDE)
 MIAMI CHILDREN'S HOSPITAL PUBLIC SERVICE)
 OFFERING OF FREE LONG DISTANCE FOR THE)
 PERIOD 10/30/89 THROUGH 8/28/90.)
 (T-89-504 FILED 9/29/89))
 _____) ISSUED: 11-20-89

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

FINAL ORDER DENYING TARIFF FILING

BY THE COMMISSION:

AT&T Communications of the Southern States, Inc., (ATT-C) filed a tariff on September 29, 1989, proposing to add a public service offering to its General Service Tariff to offer long distance calls at no charge to intensive care patients and their families at Miami Children's Hospital. These calls would originate from a specific telephone provided by ATT-C in an intensive care location designated by the hospital. All interLATA, interstate and international calls would be billed directly to ATT-C.

ATT-C has provided this Children's Hospital's Public Service Offering at the interstate level since August 29, 1988. The Miami Children's Hospital is one of twelve hospitals being added to the offering. The annual net revenue effect for individual states has not been determined. However, ATT-C is estimating that on a nationwide basis, the revenue impact to ATT-C is \$240,000. ATT-C is requesting approval to provide this service for the period November 1, 1989, through August 28, 1990.

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In order for this Commission to approve ATT-C's tariff filing it must find the offering to be in the public interest in accordance with Section 364.337(1)(b), Florida Statutes. Although ATT-C must be commended for its desire to aid Miami Children's Hospital, we must deny this tariff filing because it is violative of Section 364.08, 364.08, and 364.10, Florida Statutes. Those Sections are set out below:

Section 364.08, Florida Statutes -

(1) No telephone company shall charge, demand, collect, or receive for any service rendered or to be rendered any compensation other than the charge applicable to such service as specified in its schedule on file and in effect at that time, nor shall any telephone company refund or remit, directly or indirectly, any portion of the rate or charge so specified, nor extend to any person any advantage of contract or agreement or the benefit of any rule or regulation or any privilege or facility not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service.

(2) No telephone company subject to the provisions of this chapter shall, directly or indirectly, give any free or reduced service or any free pass or frank for the transmission of messages by telephone between points within this state; ...

Section 364.09, Florida Statutes -

No telephone company shall, directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered with respect to communication by telephone or in connection therewith, except as authorized in this chapter than it charges, demands, collects, or receives from any other person

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for doing a like and contemporaneous service with respect to communication by telephone under the same or substantially the same circumstances and conditions.

Section 364.10, Florida Statutes -

No telephone company shall make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

It is clear that this tariff offering by ATT-C will provide free service to Miami Children's Hospital, but will not provide free service to any other children's hospital in Florida or any other hospital or charitable institution in Florida. In other words, this tariff offering will not treat equally all persons similarly situated.

Section 364.337, Florida Statutes, gives this Commission the authority to exempt ATT-C from any and all parts of Chapter 364, Florida Statutes, to the extent that it finds such exemption to be in the public interest. By that authority we granted ATT-C forbearance from earnings regulation for a two-year trial period, to allow it to operate on a more competitive basis with the other interexchange carriers. However, we did not exempt ATT-C from every requirement of Chapter 364, Florida Statutes. We have not exempted even all of the minor interexchange carriers from every requirement of this Chapter.

We give each and every request for this Commission to waive a section of Chapter 364, Florida Statutes, careful consideration to assure that it meets the criteria set out in Section 364.337, Florida Statutes--in other words that such waiver would indeed enhance the competitive nature of the industry to the greater benefit of the citizens of Florida. There are sections of Chapter 364, Florida Statutes, such as those cited here, for which waiver will rarely be appropriate. In various past cases we have approved time-limited offerings at free or reduced rates because those offerings were designed as trial runs for new services or offerings that were intended

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to eventually be offered to a whole class of customers on equal terms (or to be discontinued as not likely to be successful). Section 364.337, Florida Statutes, permits such waiver when it is designed to enhance competition.

However, Sections 364.08, 364.09, and 364.10, Florida Statutes, require that a utility, or a "common carrier", must treat all persons in similar circumstances equally. This fundamental legal precept, which derives from the English common law and is echoed in the equal protection clause of the Fourteenth Amendment of our federal Constitution, means, in plain English, that every member of the public has a right to the same treatment from those who hold themselves out as providers of products or services to the public. This requirement is of far greater significance when that provider is a utility certificated by the State of Florida, through this Commission, to provide service to the public.

By denying this tariff filing, we do not wish to deprive Miami Children's Hospital from the benefit of ATT-C's shareholders' benevolence. The shareholders of ATT-C are not, in any way, precluded from giving a charitable contribution to Miami Children's Hospital or to any other charitable institution. It is simply inappropriate for this Commission to approve a tariff providing for different treatment for one children's hospital than that provided for others similarly situated. Such an offering would be equally inappropriate by any minor interexchange carrier.

Our denial of this tariff filing moots ATT-C's request for provisional waiver of Rule 25-24.485 (1)(i), Florida Administrative Code.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that AT&T Communications of the Southern States, Inc.'s tariff filing to offer long distance service also charge to intensive care patients and their families at Miami Children's Hospital is hereby denied for the reasons set forth in the body of this Order. It is further

ORDERED that this docket is hereby closed.

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By ORDER of the Florida Public Service Commission,
this 20th day of NOVEMBER, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

SFS

by: Kay Hegan
Chief, Bureau of Records

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer 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 after the issuance 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.