

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Citizens of the State) DOCKET NO. 870569-TI
of Florida for investigation into the)
1987 overearnings of AT&T COMMUNICATIONS) ORDER NO. 20872
OF THE SOUTHERN STATES, INC.)
_____) ISSUED: 3-9-89

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

ORDER DISMISSING PETITION

BY THE COMMISSION:

On May 18, 1987, the Office of the Public Counsel (OPC) filed a Petition (the Petition) requesting our issuance of a show cause order directing AT&T Communications of the Southern States, Inc. (ATT-C), to justify its current rates, to hold revenues subject to refund, to reset its return on equity at 12.5% and to reduce its rates. On June 8, 1987, ATT-C filed an Answer to the Petition, maintaining that the Petition should be denied based on legal and factual defects. By Order No. 18054, issued August 27, 1987, we set \$1,292,000 of ATT-C's revenues subject to refund, and by Order No. 18837, issued February 10, 1988, this amount was increased to \$6,829,000.

In Docket No. 870347-TI, we granted ATT-C's petition for forbearance from rate-of-return and rate base regulation for a period of two years. This action is explained in Order No. 19758, issued August 3, 1988. On September 21, 1988, ATT-C filed a Motion to Dismiss the Petition, alleging that it had been rendered moot by our forbearance decision. The Motion to Dismiss further seeks a termination of the refund requirement placed on the company.

Upon review, we find adequate grounds for dismissing the Petition and relieving ATT-C's refund requirements. In acting to forbear from traditional rate-of-return and rate base regulation of ATT-C during an experimental period, we established price caps and floors on ATT-C's rate changes in the belief that they would serve as adequate safeguards in the presence of emerging competitive forces. Additionally, we note that a rate of return was not specifically set for ATT-C following divestiture; therefore, it would be necessary to hold further proceedings in order to calculate overearnings. We find that holding such proceedings would be inconsistent with the rationale underlying our forbearance decision. For these reasons, we dismiss the Petition, relieve ATT-C of its requirement to collect revenues subject to refund and close the above-captioned docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition filed on May 18, 1987, by the Office of the Public Counsel is hereby dismissed. It is further

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ORDERED that AT&T Communications of the Southern States, Inc., is hereby relieved of the refund requirements imposed by Orders Nos. 18054 and 18837, issued August 27, 1987, and February 10, 1988, respectively. It is further

ORDERED that the Motion to Dismiss filed on September 21, 1988, by AT&T Communications of the Southern States, Inc., is hereby dismissed as moot. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission,
this 9th day of MARCH, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DLC

Commissioner Herndon dissenting and issuing the following opinion:

I opposed the Motion to Dismiss Public Counsel's Motion to Close the docket because one of the consequences of that Motion is to release from PSC jurisdiction the funds previously held under bond. I would have preferred to maintain jurisdiction over these funds until the conclusion of the forbearance experiment and decide at that time how to dispose of the funds.

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

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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.