

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

M E M O R A N D U M

JANUARY 23, 1997

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

FROM: DIVISION OF LEGAL SERVICES (CULPEPPER) *RC MCB*
DIVISION OF COMMUNICATIONS (ISLER) *Px*
DIVISION OF CONSUMER AFFAIRS (STOKES) *SoS BSA*

RE: DOCKET NO. 960554-TP - COMPLAINT AGAINST AT&T
COMMUNICATIONS OF THE SOUTHERN STATES, INC. AND UNITED
TELEPHONE COMPANY OF FLORIDA BY HEALTH MANAGEMENT
SYSTEMS, INC., REGARDING INTERLATA PIC SLAMMING

AGENDA: FEBRUARY 4, 1997 - REGULAR AGENDA - PROPOSED AGENCY
ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\960554TP.RCM

CASE BACKGROUND

• On September 12, 1995, Dr. Michael Weilert, on behalf of Health Management Systems, Inc., (referred to jointly as "customer" or "Dr. Weilert") filed two complaints with the Division of Consumer Affairs. Dr. Weilert claimed that his long distance carrier had been switched from MCI to AT&T without authorization. Staff logged complaints against both United Telephone Company of Florida (United) and AT&T Communications of the Southern States, Inc. (AT&T).

• According to United's records, the customer's service was established on March 8, 1995. MCI was selected as the preferred primary interexchange carrier (PIC). The customer's telephone service was transferred to a different location on May 9, 1995, but MCI remained the selected PIC. Beginning in April, 1995, AT&T charges appeared on the customer's United billings. At the time, the customer did not dispute any of the AT&T charges, nor did he question why AT&T was billing him. The customer did not question the AT&T charges until August 21, 1995.

• In addition to the alleged "slamming" by AT&T, the customer disputes the amount of his current balance attributable to

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reconnection charges. Dr. Weilert's service was disconnected for non-payment of his balance on January 23, 1996, February 21, 1996, February 28, 1996, March 7, 1996, March 8, 1996, and March 21, 1996. For each instance, United assessed the customer reconnection charges upon payment of all or a portion of the balance due. The total amount of reconnection charges assessed to Dr. Weilert is \$258.90.

- The customer seeks: (a) a \$260 credit to cover the reconnection charges; (b) a credit for the difference between his preferred carrier's rates (MCI) and those of AT&T; (c) a fine levied against AT&T and United in the amount of \$25,000 each; and, (d) that AT&T and United's certificates be amended, suspended, or revoked.

- Staff believes the following recommendations are appropriate.

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DISCUSSION OF ISSUES

ISSUE 1: Should Health Management Systems, Inc.'s complaint be denied?

RECOMMENDATION: Staff recommends that Health Management Systems, Inc.'s complaint be denied in part and approved in part. Staff recommends the following:

1. AT&T should be required to credit the customer's account in the amount of \$156.62, plus tax, within 45 days from the issuance of the Commission Order. This credit represents an approximate rerating of the AT&T direct dialed calls itemized on his August, September, and October, 1995, bills, totaling \$611.20, to the applicable MCI rates. AT&T should also provide Commission staff with a written verification once credit has been issued.

2. United should be required to credit the \$40 reconnection charges for the February 28, 1996, disconnection of service within 30 days from the issuance of the Commission order. United should also provide Commission staff with a written verification once credit has been issued.

3. All other issues raised by the customer should be denied.

STAFF ANALYSIS: Rule 25-4.118, Florida Administrative Code, provides, in pertinent part:

(1) The primary interexchange company (PIC) of a customer shall not be changed without the customer's authorization. A local exchange company (LEC) shall accept PIC change requests by telephone call or letter directly from its customers.

On behalf of Health Management Systems, Inc., Dr. Michael Weilert had telephone service connected on March 8, 1995. He chose MCI as his preferred interexchange carrier (PIC). The customer was, however, billed AT&T direct dialed calls on his April, May, and June, 1995, bills. It was not until the customer's June bill was issued that any other interexchange carrier charges appeared. On that bill, MCI charges were billed as operator-assisted calls,

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not direct dialed calls. Attachment A is a summary of Dr. Weilert's account activity.

There are several possible reasons that the April, May, and June, 1995 AT&T charges showed up as direct dialed calls on the customer's bill, including the possibility that United inadvertently connected the customer's service to AT&T's network instead of to MCI's. It is also possible that Dr. Weilert was actually an AT&T "casual" user; he dialed AT&T's access code each time he made a long distance call during that period.

On June 27, 1995, United received a letter of authorization (LOA) from AT&T directing United to switch Health Management's PIC to AT&T. United later provided Commission staff with a copy of a November 3, 1995, letter sent to Dr. Weilert in which United stated, in part, that

. . . it was surmised that when your service was established in March, the carrier was programmed in S/UTF's local serving central office switch as AT&T instead of MCI. However, the business office records reflected the carrier was MCI as it was the carrier designated on the original service order. Furthermore, AT&T apparently issued the letter of authorization to Sprint/United Telephone in June to change your carrier because they continued to bill you direct dialed toll calls, yet your account was not listed in their database. AT&T's letter of authorization was most likely intended to correct the records and establish your account in their database.

Staff agrees with United that this is what most likely happened.

On August 2, 1995, United received a LOA from MCI directing that the customer's PIC be switched to MCI. United made the switch. Then, on December 13, 1995, United received another LOA from AT&T requesting that Health Management's carrier be switched to AT&T. In an April 1, 1996, letter to staff, AT&T stated that it had been

. . . unable to determine how this account was switched to AT&T. We have determined that the LEC billed account was upgraded by an AT&T representative on January 16, 1996 and that this action generated the separate AT&T Small Business Advantage Plus account.

AT&T went on to explain that the customer's direct billed account was discontinued and that, "United confirmed that this

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account was returned to Sprint on February 21, 1996." According to United's reports to staff, a LOA was received from Sprint on February 21, 1996, directing United to change the customer's PIC selection to Sprint.

Based on the information provided by Dr. Weillert, AT&T, United and MCI, it is staff's opinion that Dr. Weillert's long distance carrier was switched to AT&T twice without the customer's authorization - on June 27, 1995, and, again, on December 13, 1995.

As previously noted, Dr. Weillert has requested: (a) credit in the amount of \$260 to cover the reconnection charges; (b) credit for the difference between his preferred carrier's rates (MCI) and those of AT&T; (c) that a fine be levied against AT&T and United for \$25,000 each; and (d) that AT&T and United's certificates be amended, suspended, or revoked. Staff's analysis of each of these requests is set forth below.

Credit for \$260 in Reconnection Charges

The customer's service was disconnected January 23, February 21, February 28, March 7, March 8, and March 21, 1996. In each instance, he was billed \$40 (\$20 per line) to reconnect, with the exception of the January 23 episode. In that instance, the customer was billed the residential rate of \$15 per line, instead of business rates. Dr. Weillert was billed \$70 in reconnection charges on the February, 1996 bill, \$120 on the March bill, and \$40 on the April bill. The total reconnection charges are \$258.90, including \$28.90 in taxes. Each disconnection of service is discussed below.

• January 23, 1996

The customer's December 22, 1995, bill, in the amount of \$257.93, became due January 12, 1996. Service was cut on January 23, 1996, for non-payment of that December, 1995, bill. The customer paid in full later that day and service was restored.

• February 21, 1996

The customer's January 22, 1996, bill included new charges of \$166.54 (United charges), and \$417.77 (AT&T charges). That bill became due February 9, 1996. On February 21, 1996, service was cut for non-payment of the current charges. Later the same day, Dr. Weillert paid \$54.31, leaving a balance of the current charges totaling \$530.00. Service was restored that day. The customer

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then disputed the AT&T charges. Deducting the disputed AT&T charges, the balance amounted to \$112.23.

- February 28, 1996

United stated that it contacted AT&T to see if the customer had disputed any charges. AT&T advised United that Dr. Weilert had not disputed any charges and that no adjustments were pending. United then suspended service to the customer. Dr. Weilert paid \$112.23 later that day and service was restored.

- March 7, 1996

The customer's \$54.31 check was returned by his bank for nonsufficient funds. Service was cut for the returned check. According to United, the customer called. He requested that service be restored and promised to make payment by noon on March 8. Upon Dr. Weilert's promise, United restored service to the customer.

- March 8, 1996

Dr. Weilert failed to make the promised payment, so United again disconnected service to the customer. Service remained disconnected until March 11, 1996, when a cash payment of \$54.31 was received.

- March 21, 1996

The customer's February 22, 1996, bill included \$217.63 in United current charges, and a previous balance of \$530.00, for a total due of \$747.63. On March 10, the customer's February bill became due. On March 13, United suspended service to the customer for non-payment. At staff's request, United restored service to Dr. Weilert on March 18, 1996. The customer was not billed for reconnection. However, the customer was advised that he must pay the United past due charges of \$217.63 in order to avoid another disconnection. On March 21, service was cut for non-payment of the \$217.63 balance. On March 25, United advised staff that it would agree to restore service upon payment of \$104.04. United would then temporarily set aside the remaining balance of \$113.59 until Commission staff could review the customer's account. A cash payment of \$104.04 was received on March 26 and service was restored.

Rule 25-4.113 (1)(f) states in part that a telephone company may refuse or discontinue service, "For non-payment of bills for telephone service, including the telecommunications access system

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surcharge referred to in Rule 25-4.160 (3), provided that suspension or termination of service shall not be made without 5 working days' written notice to the customer, except in extreme cases."

Staff believes that the January 23, February 21, and March 21, 1996, disconnections of service were proper. In each of those instances, the company cut the customer's service for non-payment of the previous month's bill. Thus, staff believes that the reconnection charges associated with these disconnections are appropriate.

Staff also believes that the March 7 and March 8, 1996, disconnections of service were proper. The March 7 disconnection was the result of a returned check. United's notice states that if payment is made by check, which is later returned by the bank, service will be disconnected without further notice. Staff, therefore, believes that the customer received sufficient notice of United's action, and that such action was consistent with Rule 25-4.113, Florida Administrative Code. Later the same day, the customer called United. He asked that service be restored and promised to pay by noon the next day. United agreed, and service was restored on March 7, 1996. Dr. Weilert did not, however, fulfill his promise to make payment by noon on March 8, 1996. As a result, United again disconnected Dr. Weilert's service. Staff believes that the March 8 disconnection was also proper because the customer did not make the promised payment. Staff, therefore, believes that the reconnection charges associated with these instances of disconnection are also appropriate.

Staff does, however, find the February 28 disconnection of service questionable. United had restored the customer's service when he made a partial payment on February 21, 1996. Thus, staff believes that United should have given the customer another five working days' notice before disconnecting service again. Staff believes that United should have either insisted on full payment before restoring service on February 21, or provided another five working days' notice before disconnecting service for non-payment of the balance. Thus, staff believes that United should be required to credit Dr. Weilert's account for the \$40 reconnection charge associated with the February 28 disconnection of service.

Credit Difference between MCI and AT&T's rates

Rule 25-4.118 (5) provides that:

Charges for unauthorized PIC changes and higher usage rates, if any, over the rates of the preferred company

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shall be credited to the customer by the IXC responsible for the error within 45 days of notification.

In an effort to correct any part that it may have played in this matter, United gave the customer a 25% discount off AT&T's rates for all calls made between the date his service was connected, March 8, 1995, and the date United received the first LOA from AT&T, June 27, 1995.

As discussed, AT&T apparently had the customer's carrier switched twice without the customer's authorization. The customer was billed AT&T long distance charges of \$596.80 on the August bill, \$4.00 on September's bill, and \$10.40 on October's bill for a total of \$611.20, plus tax. None of these calls were rerated.

In addition to the calls billed via United, AT&T direct-billed the customer on January 25, 1996, and February 25, 1996. AT&T gave the customer a 40% credit, \$65.64 and \$117.80, respectively, on each of these bills. In addition, AT&T gave the customer a 50% credit, or \$235.67, for the AT&T charges on the January bill from United.

Taking into account all of the credits and discounts applied to his account, staff has determined that Dr. Weilert was billed \$611.20, plus tax, to which no discounts or rerating were applied. Staff believes that the calls totaling \$611.20 should be rerated using MCI's rates.

MCI advised staff that the customer was on its MCI Preferred plan when Health Management Systems was with MCI. Based on the difference between MCI's and AT&T's rates for intrastate calls, staff estimates that AT&T should credit the customer's account by \$156.62, plus tax. Due to the various discounts and interstate charges applied to Dr. Weilert's account, the \$152.62 credit amount is only an approximation. However, in light of the complexity of this case and of AT&T's role in slamming Health Management, staff believes the suggested credit amount is reasonable.

Staff, therefore, recommends that AT&T be required to credit Health Management Systems, Inc.'s account \$156.62, plus tax for long distance calls billed by AT&T on the customer's August, September, and October, 1995, bills. Staff also recommends that AT&T should provide staff with a written report after the credit has been provided.

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**Fine and Amend, Suspend, or Revoke Certificates
of AT&T and United**

In Docket No. 960626-TI, established after Dr. Weilert's original complaint was docketed, the Commission initiated show cause proceedings against AT&T for violation of the Commission's PIC selection rule (slamming). A copy of one of Dr. Weilert's complaints was placed in the correspondence side of that docket.

By Order No. PSC-96-1405-AS-TI, issued in Docket 960626-TI, on November 20, 1996, the Commission approved AT&T's settlement offer. Pursuant to that Order, AT&T must contribute \$30,000 to the Commission for deposit in the State General Revenue Fund, and implement several quality assurance plans to ensure that no further unauthorized switching of customers to AT&T will occur. Since AT&T paid \$30,000 for violations of Rule 25-4.118, Florida Administrative Code, one of which involved Dr. Weilert, staff believes that AT&T should not be fined in this docket, Docket 960554-TP.

There is no clear indication that United was at fault in initially connecting the customer to AT&T instead of MCI. If United was, indeed, at fault, staff believes that United has adequately rectified that mistake by giving the customer a 25% credit on the AT&T direct dialed calls made between March and June, 1995. Staff, therefore, does not recommend that United be fined.

In addition, staff does not recommend amending, suspending, or revoking AT&T's and United's certificates. Instead, staff believes its recommended adjustments are sufficient.

Although staff advised Dr. Weilert in numerous telephone conversations and by letter dated May 15, 1996, (Attachment B, Page 14) that if he paid everything except what staff determined to be in dispute, his service would be restored, Dr. Weilert has not to staff's knowledge paid the undisputed balance. Thus, Health Management Systems, Inc.'s service is still off, in accordance with Rule 25-22.032(10), Florida Administrative Code.

Currently, Health Management Systems, Inc.'s balance is \$1,435.73. If the Commission approves staff's recommendation and orders AT&T to credit \$156.62 and United to credit \$40.00, a balance of \$1,239.11, not including tax, is due. Once this amount is paid, Dr. Weilert could then apply for new telephone service.

For the above reasons, staff recommends that Dr. Weilert's complaint be denied in part and approved in part.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation in Issue 1, this docket should remain open until AT&T and United provide Commission staff with detailed reports indicating that the customer has been given the credit recommended in Issue 1. If no person whose substantial interests are affected timely files a protest within 21 days of the Commission's proposed agency action, this docket should be closed administratively when AT&T and United submit their reports.

STAFF ANALYSIS: If no substantially affected person files a request for a Section 120.57 hearing within 21 days of the issuance of the order, this docket should be closed administratively upon staff's receipt of the reports from AT&T and United.

Health Management Systems, Inc. Summary
Docket No. 960554-TP

<u>DATE</u>	<u>ACTION TAKEN</u>
03/08/95	Service connected. Customer requested MCI. Direct dialed calls going through AT&T.
04/13/95	Bill - \$609.76 in AT&T direct dialed calls. Customer paid & did not dispute any charges.
05/09/95	Customer moved and service transferred. Records show MCI is his carrier, although direct dialed calls going through AT&T.
05/13/95	Bill - \$824.46 in AT&T direct dialed calls. Customer paid & did not dispute any charges.
06/13/95	Bill - \$133.77 in MCI operator assisted calls and \$103.52 in AT&T direct dialed calls. Total bill is \$484.70.
06/27/95	LOA received from AT&T. Customer "officially" switched to AT&T.
07/13/95	Bill - \$51.76 in MCI operator assisted calls. No AT&T new charges.
08/02/95	LOA received from MCI. Customer switched to MCI.
08/13/95	Bill - Total is \$1,478.53, including an unpaid balance of \$573.86 (\$407 from June and \$166.76 from July), and current charges of \$180.13 for United, \$9.92 for MCI, and \$714.62 for AT&T.
08/15/95	Service cut for non-payment. Restored with the understanding payment would be made by 8/18 or he would be cut again.
08/21/95	No payment - service cut. He paid \$573.86 later the same day and service was restored. United advised that for the first time, the customer advised them he had never requested AT&T as his carrier and disputed the AT&T charges. Customer was advised to call AT&T.
09/08/95	Service cut for non-payment of \$904.67 balance.

DATE	ACTION TAKEN
09/09/95	Payment of \$190 received. Service restored. Balance is \$714.67 in AT&T charges.
09/12/95	Service cut for \$714.67 balance. Customer paid \$120 later that day and service was restored.
09/13/95	Bill - Total is \$940.40, including previous balance of \$594.67, and current charges of \$256.16 for United, \$85.06 for MCI, and \$4.51 for AT&T.
10/13/95	Bill - Total is \$772.02, including previous balance of \$594.67, and current charges of \$142.07 for United, \$23.54 for MCI, and \$11.74 for AT&T.
11/03/95	United gave customer credits: 25% off AT&T tolls made between March and June, 1995 (\$565.17); 2 restoral charges that appeared on his 9/13 bill (\$40); and late payment charges for 9/95 and 10/95 bills(\$22.49).
11/13/95	Bill - Total is \$962.88, including previous balance of \$18.55, and current charges of \$208.38 for United, \$733.08 for MCI, and \$2.87 for OAN.
12/01/95	Customer moved - service transferred. Long distance service with MCI.
12/13/95	LOA received from AT&T to switch customer to AT&T.
12/22/95	Bill - No AT&T new charges.
01/22/96	Bill - \$166.54 in United charges, \$417.77 in AT&T charges, plus \$257.93 previous balance for a total of \$842.24.
01/23/96	Service cut for non-payment. Customer paid December bill in full (\$257.93) and service restored.
02/21/96	Service cut for non-payment. Customer paid \$54.31, which was applied to United's balance and service restored. Also, customer's PIC changed to Sprint.
02/22/96	Bill - \$217.63 in United charges plus \$530 previous balance for a total of \$747.63.

DATE	ACTION TAKEN
02/28/96	Service cut for non-payment. Payment of \$112.23, which was applied to United's balance and service was restored.
03/07/96	Service cut - customer's \$54.31 check (2/21 entry) returned by bank "NSF" debited. Service restored later that day.
03/08/96	Service cut for non-payment.
03/11/96	Payment of \$54.31, which was applied to United's balance and service was restored.
03/13/96	Service cut for non-payment.
03/18/96	Service restored.
03/21/96	Service cut for non-payment.
03/22/96	Bill - \$340.53 in United charges, \$182.70 for Sprint, plus \$635.40 previous balance for total of \$1,158.63.
03/26/96	Payment of \$104.04, which was applied to United's balance and service restored.
03/29/96	AT&T credited \$208.88 (50% off its \$417.77 charges billed on the 1/22/96 bill). Also, \$26.79 in tax credit adjusted.
04/22/96	Bill - \$190.91 in United charges, \$374.25 in Sprint charges, plus previous balance of \$818.92 for a total of \$1,384.08.
05/02/96	Service cut for non-payment and permanently disconnected 05/20/96. Service still has not been restored.
05/22/96	Final Bill - Total \$1,435.73, including a previous balance of \$1,384.08, \$25.10 credit for United charges, and new charges of \$3.38 for MCI, \$2.21 for AT&T, and \$71.16 for Sprint.

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Attachment B
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STATE OF FLORIDA



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(904) 413-6199

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

Public Service Commission

May 15, 1996

Dr. Michael Weilert
Health Management Systems, Inc.
13738 Oxbow Road
Fort Myers, Florida 33905

Re: Docket No. 960554-TP

Dear Dr. Weilert:

I have been assigned to handle your complaint against AT&T and United. Your complaint has been docketed as shown above.

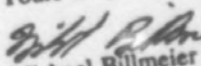
I understand that United has disconnected your telephone service for nonpayment of bills. You stated today that all bills for your telephone service have been paid. You, however, refused to provide the Commission staff with any receipts or other documentation. According to United, you owe a total of \$1,384.08. United states that \$304.57 of this total is disputed.

Rule 25-22.032(10), Florida Administrative Code, allows a utility to require a customer to pay the portion of a bill not in dispute during the pendency of complaint proceedings. The Rule further states that if the parties cannot agree on an amount in dispute, the Commission staff shall estimate the disputed amount.

Paula Isler has been assigned by the Division of Communications to determine the amount in dispute. Based on the information received, she has determined that \$304.57 is in dispute. Upon payment of \$1,079.51 and payment of all future bills, United will restore your telephone service until the complaint is resolved.

Please write to me at the above address if you have any questions.

Yours truly,


Michael Billmeier
Staff Counsel

LMB/anr
cc: William B. Ellinger, Esq.

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