BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: 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.	DOCKET NO. 960554-TP ORDER NO. PSC-97-0203-FOF-TP ISSUED: February 20, 1997

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER RESOLVING COMPLAINT

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

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. Commission staff recorded 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 disputed the amount of his current balance attributable to 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. Our findings are as set forth below.

FINDINGS

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.

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 us 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.

We agree that this is a probable scenario.

On August 2, 1995, United received a letter of authorization (LOA) from MCI directing that Dr. Weilert'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 our 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 further explained that the customer's direct billed account was discontinued and that, "United confirmed that this 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. Weilert, AT&T, United and MCI, we believe that Dr. Weilert'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. Weilert 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. Our 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. Weilert 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. Weilert paid $54.31, leaving a balance of the current charges totaling $530.00. Service was restored that day. The customer then disputed the AT&T charges. When the disputed AT&T charges are deducted, 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 having insufficient funds to cover the check amount. 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. The customer's February bill was due March 10. On March 13, United suspended service to the customer for non-payment. At the urging of Commission staff, United restored service to Dr. Weilert on March 18, 1996. The customer was not billed for reconnection. However, the customer was advised that he had to 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 our 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 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."

Based on the evidence, we find 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, the reconnection charges associated with these disconnections are appropriate.

We also find 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. Thus, the customer received sufficient notice of United's action in accordance with Rule 25-4.113, Florida Administrative Code. Later the same day, the customer called United. He asked that his 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. The March 8 disconnection was proper because the customer did not make the promised payment. We, therefore, find that the reconnection charges associated with these disconnections are appropriate.

We do, however, find the February 28 disconnection of service questionable. United had restored the customer's service when Dr. Weilert made a partial payment on February 21, 1996. Thus, United should have given the customer another five working days' notice, in accordance with our rules, before disconnecting service again. 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. United shall, therefore, 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 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, we have determined that AT&T 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, totalling $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, we have determined that Dr. Weilert was billed $611.20, plus tax, to which no discounts or reratings were applied. The calls totaling $611.20 shall be rerated using MCI's rates.

MCI advised our 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, we estimate 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 an approximation. However, in light of the complexity of this case and of AT&T's role in slamming Health Management, we find that the suggested credit amount is reasonable.

We shall, therefore, require AT&T 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. Furthermore, AT&T shall provide our staff with a written report after the credit has been provided.

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, we 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 file of that docket.

By Order No. PSC-96-1405-AS-TI, issued in Docket 960626-TI, on November 20, 1996, we 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, AT&T shall 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, 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. United, therefore, shall not be fined.

In addition, AT&T's and United certificates shall not be amended, suspended, or revoked. The adjustments set forth herein are sufficient.

We note that Health Management Systems, Inc.'s service is still disconnected, in accordance with Rule 25-22.032(10), Florida Administrative Code.

Currently, Health Management Systems, Inc.'s balance is $1,435.73. Applying the credit of $156.62 from AT&T and the credit of $40.00 from United, Dr. Weilert still owes a balance of $1,239.11, not including tax. Once this amount is paid, Dr. Weilert may then apply for new telephone service.

Based on the above, we find that Health Management Systems, Inc.'s complaint shall be denied, in part, and approved, in part. Our determination is as follows:

1. AT&T shall 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 shall also provide our staff with a written verification once credit has been issued.

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

3. All other issues raised by the customer are hereby denied.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the complaint by Health Management Systems, Inc. against AT&T Communications of the Southern States, Inc. and United Telephone Company of Florida is granted, in part, and denied, in part, to the extent set forth in the body of this Order. It is further

ORDERED that this docket shall remain open until AT&T Communications of the Southern States, Inc. and United Telephone Company of Florida submit detailed reports to Commission staff that show that Health Management Systems, Inc.'s account has been credited as ordered herein. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final and upon AT&T Communications of the Southern States, Inc.'s and United Telephone Company of Florida's submittance of the herein ordered reports, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 20th day of February, 1997.

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BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 13, 1997.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date 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.