

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

RECEIVED

MEMORANDUM

SEPTEMBER 25, 1997

SEP 29 1997

11:50

FPSC - Records/Reporting

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

FROM: DIVISION OF COMMUNICATIONS (ISLER, C. LEWIS)
DIVISION OF LEGAL SERVICES (CULPEPPER) MKR/PC

RE: DOCKET NO. 961458-TI - COMBINED COMPANIES, INC. -
INITIATION OF SHOW CAUSE PROCEEDINGS FOR VIOLATION OF
RULES 25-4.118, F.A.C., INTEREXCHANGE CARRIER SELECTION,
AND 25-24.470, F.A.C., CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY REQUIRED.

AGENDA: OCTOBER 7, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\961458TI.RCM

CASE BACKGROUND

In mid-1996, staff received a complaint from a consumer who advised Commission staff that his long distance service had been switched without his permission from AT&T to Combined Companies, Inc. (CCI or the company). The customer also indicated that AT&T later billed him a "True Up Charge." In response to staff's inquiry into the situation, AT&T stated that CCI was an AT&T reseller. AT&T also advised staff that CCI is its customer and the complainant, or end user, is CCI's customer.

AT&T further stated that pursuant to its tariff on file with the Federal Communications Commission, CCI is liable for shortfall charges, or true up charges, if it does not meet a certain revenue commitment each year. AT&T asserted that CCI did not meet its requirement; therefore, AT&T billed the true up charges on a prorated basis to all of CCI's customers.

Staff contacted CCI, which is not certificated as an interexchange carrier, regarding the complaint and AT&T's report. CCI advised staff that the complainant agreed to allow CCI to acquire discounts on their AT&T Term Plan and that it denied providing interexchange service within Florida.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 961458-TI
DATE: SEPTEMBER 25, 1997

On February 18, 1997, the Commission issued Order No. PSC-97-0179-FOF-TI requiring CCI to show cause why it should not be fined up to \$25,000 for providing interexchange service without a certificate and switching a customer's long distance service without authorization.

CCI responded to the Order to Show Cause by timely filing a request for a hearing. A hearing was set for October 14, 1997. CCI, however, submitted a proposed settlement offer (Attachment A) to staff by letter dated July 30, 1997. This is staff's recommendation to accept the proposed settlement offer. Staff notes that the prehearing conference in this case is scheduled for October 8, 1997.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement proposed by Combined Companies, Inc., as a resolution of the apparent violations of Rules 25-4.118, F.A.C., Interexchange Carrier Selection, and 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required?

RECOMMENDATION: Yes. The settlement offer resolves the issues in this docket, will ensure that all of the customers involved are being made whole, and is in the public interest. Staff further recommends that CCI be required to submit a report to the Commission within 30 days of the date this Order becomes final, informing the Commission of when CCI provided notice to its former customers of the means by which the customers may obtain a refund. (Isler)

STAFF ANALYSIS: Staff received a complaint from a consumer who complained that he had been switched to an interexchange carrier without his permission. Staff investigated the matter and found that the company to which the customer had been switched, CCI, was not certificated. In addition, the customer advised staff that AT&T had billed the customer a substantial amount in true-up charges on CCI's behalf. Staff subsequently received another complaint, almost identical to the first complaint.

On February 18, 1997, the Commission issued Order No. PSC-97-0179-FOF-TI, requiring CCI to show cause why it should not be fined up to \$25,000 for providing interexchange service without a certificate and switching a customer's long distance service without authorization. The company responded to the Commission's Show Cause Order on March 10, 1997, by requesting a hearing.

CCI's proposed settlement offer (Attachment A) can be summarized as follows:

- The consumers who were on CCI's plan have already been converted back to AT&T.
- AT&T has agreed to refund any true-up charges that CCI customers have paid. If it is able to obtain sufficient address information from AT&T, CCI has also agreed to inform all of its former Florida customers that if the customers paid the true-up charge, they may contact AT&T regarding a refund. (Attachment C).

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- AT&T will not attempt to collect any true-up charges that have been billed but have not been paid by CCI customers.
- CCI will cease engaging in any telecommunications business in Florida without first filing for a certificate from the Commission.

Staff notes that between \$2,000 and \$2,500 was applied to each of CCI's approximately 40 end users' bills by AT&T in order to cover the true-up charge. Staff further notes that counsel for AT&T and CCI have indicated that, based upon the amount placed on customers' bills and the complaints they have reviewed, neither believes that any CCI customer actually paid the amount added to bills to cover the true-up charge. Nevertheless, AT&T has agreed to refund the true-up charge to any customer that may have paid it in order to resolve some of AT&T's issues with CCI. CCI has also agreed that if it is able to obtain sufficient address information from AT&T, it will provide notice to all of its former customers in Florida that this charge was applied to their bills, and that the customers may contact AT&T for a refund if they paid the true-up charge amount¹.

Staff does not believe that an additional fine is necessary in this instance since the company is no longer conducting business in Florida, the customers were made whole by adjusting the true up charges, and the customers were switched back to AT&T. In addition, CCI has promised to apply for a Certificate of Public Convenience and Necessity if it does decide to conduct telecommunications business in Florida in the future. Also, staff received a letter from AT&T confirming the settlement between the two parties (Attachment B). Therefore, staff believes the settlement is in the public interest and the Commission should accept Combined Companies, Inc.'s proposal. Staff further recommends that CCI be required to submit a report to the Commission informing the Commission of when CCI provided notice to its former customers of the means by which the customers may obtain a refund.

¹ Staff notes that at the time of the filing of this recommendation, we are continuing to work with both CCI and AT&T to ensure that CCI's Florida customers are fully informed that they may contact AT&T for a refund if they paid the true-up charge.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, if the Commission approves staff's recommendation in Issue 1, no further issues remain in this docket for the Commission to resolve and this docket should be closed.
(Culpepper)

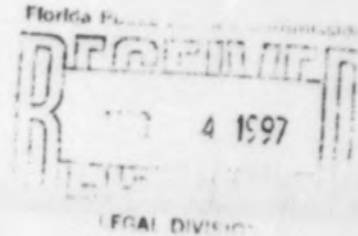
STAFF ANALYSIS: Yes, if the Commission approves staff's recommendation in Issue 1, no further issues remain in this docket for the Commission to resolve and this docket should be closed.

Attachment A
Docket No. 961458-TI
September 25, 1997

LAW OFFICES OF
JEFFREY A. SARROW, P.A.
300 SOUTH PINE ISLAND ROAD, SUITE 304
PLANTATION, FLORIDA 33324

(954) 475-3188
Telefax (954) 474-4416

July 30, 1997



Beth Culpepper
State of Florida
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: **Public Service Commission vs. Combined Companies, Inc.**
Docket No. 961458

Dear Ms. Culpepper:

I wish to advise you that Combined Companies, Inc. and AT&T Corp. have resolved all existing disputes between them, including those matters before the Federal Communications Commission in the matter of AT&T Corp. vs. Combined Companies, Inc., etc. file no. E-97-02 and Combined Companies, Inc. vs. AT&T Corp., Civil action no. 95-908 (NHP) United States District Court, District of New Jersey.

Although the terms and conditions of the settlement are confidential, end-user customers have been converted to direct customers of AT&T as provided for under the terms of AT&T tariffs. Additionally, AT&T has agreed to refund to any of CCI's end-users any shortfall or true-up charges that have been paid in connection with the services previously provided. Also, AT&T will not attempt to collect from the end-users any true-up charges which may have been invoiced or billed to such end-users.

You will be receiving direct communication from AT&T which collaborates those features of the settlement which impact upon the end-users.

Although Combined Companies, Inc. vigorously contests any allegations of wrongdoing, you may be advised that CCI will not engage in the telecommunications business without filing for a certificate in accordance with Rule 25-24.470 Florida Administrative Code.

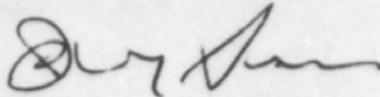
Attachment A
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September 25, 1997

July 30, 1997

In view of the foregoing, and since all end-users will be made whole, and will not be further burdened with invoices for true-up charges, it would certainly be in the public interest to terminate the proceedings against Combined Companies, Inc. as we have previously discussed.

I look forward to your prompt advice in anticipation of finalizing this matter.

Very truly yours,



JEFFREY A. SARROW

cc: Combined Companies, Inc.

JAS:scs

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Attachment B
Docket No. 961458-TI
September 25, 1997



Carla M. Mascaro
Attorney

Room 2251F1
295 North Maple Avenue
Basking Ridge, NJ 07920
908 221-5303
FAX 908 953-8360

August 1, 1997

Ms. Elizabeth Culpepper
Florida Public Service Commission
1540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Combined Companies, Inc.

Dear Ms. Culpepper:

I write to update you on the status of the legal and regulatory proceedings between CCI and AT&T. This letter also supersedes a communication that Ms. DeMello of your office received Tuesday from Liz Way of AT&T.

During the past year, we have received inquiries from your staff regarding Combined Companies, Inc. ("CCI"). Many of your inquiries involved (1) the possible switch of these end users' 800 service from another provider to CCI, or (2) the appearance of certain shortfall or "true-up" charges on the end users' invoices. These and other on-going disputes among AT&T, CCI and a third party, Winback and Conserve, Inc.¹, have been the subject of federal court proceedings in New Jersey and Federal Communications Commission proceedings.

AT&T and CCI have now amicably resolved the disputes between them. As a result, the end user customers, some of whom may do business in your state, have been converted to direct customers of AT&T, as provided for under the terms of AT&T Tariffs filed with the Federal Communications Commission. In addition, AT&T has agreed to refund to any CCI end users any shortfall (or "true-up charges") they show they have paid in connection with the Services previously provided by CCI. Also, AT&T will not attempt to collect from the end users, any true-up charges which may have been invoiced or billed to the end users.

¹ Winback and Conserve, Inc. was the service provider to these end-users prior to May 19, 1995.

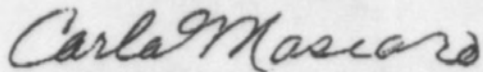
Attachment B
Docket No. 96108-TI
September 25, 1997

AT&T's litigation with Winback & Conserve, Inc., though, continues. As for CCI, the following information may be helpful: Prior to May 19, 1995, CCI was not AT&T's customer under the Plans. CCI did not become AT&T's customer until after the plans were transferred to CCI in accordance with the May 19, 1995 order of the United States District Court for the District of New Jersey.

If you have any questions regarding this development, do not hesitate to contact me at (908) 221-5303.

Thank you.

Very truly yours,



Carla Mascaro

cc: Ms. Elizabeth Way
Ms. Beverlee DeMello

Attachment C
Docket No. 961458-TI
September 25, 1997

LAW OFFICES OF
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September 26, 1997

Telefax 904-413-6250

Beth Culpepper
State of Florida
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: **Public Service Commission vs. Combined Companies, Inc.**
Docket No. 961458

Dear Ms. Culpepper:

All of the end users in the State of Florida who became CCI's customers, acquired that status as a result of the transfer of certain AT&T Customer Specific Term Plans and/or Revenue Volume Pricing Plans from Winback and Conserve, Inc. (or a related entity) to Combined Companies, Inc. This transfer was pursuant to Order of the United States District Court in and for the District of New Jersey on May 19, 1995.

Since only the plans were transferred to CCI, and since it did not have original contact with the end users, the specific identity and address of the end users was never provided and therefore was not maintained in CCI's files. Previously, CCI had requested, and was refused this information from AT&T. At all times, AT&T billed the end users, and collected all payments from the end users.

Except for three identifiable complainants, Killearn Brokers, Road Runner Travel Resort, and the Getzen, Hagin Law Firm, CCI cannot specifically identify any other Florida end users. However, we can "guesstimate" that we had approximately forty Florida end users as of May, 1997.

Although CCI did not invoice the end users as previously stated, based upon the little information that we have about the invoicing of the "true-up charges", we believe that the average charge was in the range of \$2,000.00 to \$2,500.00.

CCI is unaware of any end user actually paying a true-up charge, and has not received any complaints from any Florida end-user in this regard.

Attachment C
Docket No. 961458
September 25, 1997

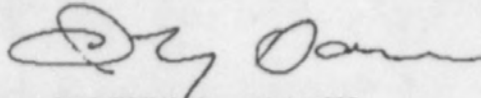
Beth Culpepper
Page 2

September 26, 1997

As you know, AT&T has the records of the end-users, and also has records showing which, if any of the end-users actually paid a true-up charge. In order to resolve these proceedings by dismissal, CCI would offer to notify the Florida end-users of their right to a refund of any true-up charges actually paid, if AT&T would provide the names and addresses of such end-users to CCI. In this regard, I have requested this information from AT&T in writing today.

I am hopeful that you will see that CCI is doing all that it can to resolve the Commission's questions and to ensure that the end-users are made whole and not subject to any further inconvenience.

Very truly yours,



JEFFREY A. SARROW

JAS:scs

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