

Talbott *YUAB for WDT*  
Vandiver *MCB for EV*

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

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REGULATORY AND REPORTING

**DATE:** SEPTEMBER 29, 1998

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

**FROM:** DIVISION OF LEGAL SERVICES (BEDELL) *MCB for CB*  
 DIVISION OF CONSUMER AFFAIRS (DURBIN) *MCB for BJR*  
 DIVISION OF COMMUNICATIONS (BIEGALSKI) *WB*

**RE:** DOCKET NO. 971492-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. AND D/B/A CONNECT 'N SAVE FOR VIOLATION OF RULE 25-4.118, F.A.C., INTEREXCHANGE CARRIER SELECTION.

**AGENDA:** 10/06/98 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** THIS ITEM SHOULD BE HEARD BEFORE ADDRESSING ISSUE 1 ON ITEM 24

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\971492A.RCM

### CASE BACKGROUND

On September 24, 1998, staff filed a recommendation regarding the apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection. On September 25, 1998, AT&T submitted a settlement offer to resolve the apparent slamming violations. (Attachment A) In its settlement offer, AT&T agreed to do the following:

- Make a voluntary payment to the State of Florida general revenue fund in the amount of \$287,493.
- Create and maintain the Customer Slamming Resolution Centers as a dedicated resource to resolve slamming inquiries and

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collect data to monitor and assist in identifying trends and resolving them in furtherance of AT&T's Zero Tolerance for Slamming Policy.

- Continue deployment of "AT&T Branding/Time At Destination" offering for 1+ calls which identifies callers as AT&T customers when a 1+ call is place.
- Discipline employees found to have violated AT&T's Zero Tolerance for Slamming Policy up to and including termination.
- Increase consumer awareness of the AT&T Customer Slamming Resolution Centers by the use of media advertisements and including the phone number for the center in the welcome packages of residential customers switched by AT&T.
- Institute the "AT&T Mystery Shopper Program" as a quality control measure on AT&T's face-to-face marketing efforts.
- Offer a warm transfer of calls from the Florida Public Service Commission to AT&T's Customer Slamming Resolution Centers to assist in resolving slamming inquiries.
- Terminate relationships with vendors that do not comply with AT&T's Zero Tolerance for Slamming Policy against slamming.
- Verify 100% of all LOAs received during the course of its face to face consumer marketing efforts for a period of six months after the date an Order in this docket is signed. Identification will be required by the AT&T representative and will be subsequently verbally verified by a third party prior to the change.

Based on this settlement offer, staff believes the following recommendation is appropriate.

**DISCUSSION OF ISSUES**

**ISSUE A:** Should the Commission accept AT&T's proposed settlement offer as resolution to the apparent slamming violations?

**RECOMMENDATION:** No. The Commission should not accept AT&T's proposed settlement offer and should issue a show cause order as recommended in Issue 1. **(Biegalski)**

**STAFF ANALYSIS:** During staff's investigation of the consumer complaints regarding AT&T's unauthorized carrier change practices, it was determined that the two major categories of complaints were inbound customer service and apparent forgeries on LOAs. When staff researched the previous docket, Docket No. 960626-TI, it was determined that these two categories were also the major categories of complaints in that docket. In addition, AT&T stated in its settlement letter dated July 29, 1996, that "AT&T has been on the forefront of efforts to reduce the incidents of slamming in the industry. AT&T has established methods and procedures to ensure the highest level of integrity and quality in its interexchange carrier selection process." Furthermore, in its revised settlement letter dated August 30, 1996, AT&T stated that "in addition to the process improvements described in its settlement offer, AT&T already has in place methods and procedures to ensure that it does not "willfully violate or refuse to comply with" Florida laws regarding interexchange carrier selection."

Based on staff's review of the consumer complaints against AT&T that continue to be received by the Division of Consumer Affairs, it does not appear that these statements were correct. In addition to the 183 complaints contained in this recommendation, from May 19, 1998 through September 29, 1998, the Division of Consumer Affairs has categorized an additional 61 complaints as slamming infractions. Furthermore, AT&T's current proposal offers to implement two procedures that were already agreed to in the previous show cause docket. This includes requiring identification to be produced when signing an LOA and to implement the mystery shopper program. These two elements were either never implemented or have not been effective in curbing the problem. Moreover, AT&T implemented the Customer Slamming Resolution Center as a result of the previous show cause docket. The center was in full operation as of January 1, 1998.

Staff does believe, however, that AT&T has proposed to implement some procedures that staff can support. This includes verifying 100% of the written LOAs for a period of six months.

Staff believes this will ensure that the customer intended to select AT&T as their long distance carrier for the selected services. Staff also supports AT&T's proposal to brand all 1+ calls. Staff believes this will alert the consumer that they are utilizing the services of AT&T. Staff also supports the proposal of the warm transfer between the Division of Consumer Affairs and AT&T. Staff believes this will help customers receive expedited resolution to complaints. Staff notes that the Slamming Resolution Center, created immediately following our last show cause action, will help AT&T quickly resolve slamming complaints. Staff believes that it will also enable AT&T to determine when a problem exists in a particular area.

However, staff cannot support the monetary settlement. Staff does not believe that the settlement amount reflects the seriousness of the volume and repeated nature of the apparent slamming violations. AT&T's settlement offer suggests that for settlement purposes AT&T should be compared to LCI, MCI and Sprint. In each of these companies' settlements, the companies agreed to take preventative actions to address the more serious categories of complaints. Without being assured that inbound calls will be recorded, staff does not believe AT&T's comparison to these companies is appropriate. More specifically, staff believes this comparison is inaccurate for the following reasons:

- The Commission's recent action regarding LCI was the first action taken against LCI for apparent slamming violations. Therefore, due to the fact that the initial recommendation for a second offense was three times that of a first offense, AT&T should consider tripling the LCI settlement average to reach a more comparable monetary amount.
- The Commission's recent action regarding MCI was settled for \$240,000, related to six violations. In addition, MCI has agreed to record Third Party Verification for a period of three years. MCI was also able to provide additional information and documentation to staff to aid in its investigation of the apparent slamming complaints. Therefore, staff was able to reduce the number of apparent slamming infractions.
- The Commission's recent action regarding Sprint included measures to ensure that keypunch errors would be significantly reduced. Sprint did not have the egregious problem of forgeries.

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DATE: September 24, 1998

In settlement negotiations staff has proposed settlements significantly lower than \$5,400,000. However, those settlement discussions included consideration of recording inbound calls and AT&T's resolution of the slamming rules docket. Neither of these are included in AT&T's offer of September 25, 1998.

Based on these circumstances, staff does not recommend accepting AT&T's settlement proposal and recommends issuing a show cause order as recommended in Issue 1.



**Kenneth P. McNeely**  
Law & Government Affairs  
Vice President - Florida

September 25, 1998

Suite 700  
101 N. Monroe St.  
Tallahassee, FL 32301  
850 425-6360  
FAX: 850 425-6361

Via Hand-Delivery

Catherine Bedell  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Florida

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REGISTRY

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LEGAL DIV 8

***Re: Docket No. 971492-TI Initiation of Show Cause Proceedings against AT&T Communications of the Southern States, Inc. for Violation of Rule 25-4.118, F.A.C.***

Dear Ms. Bedell:

I write in response to your letter dated September 10, 1998. In that letter Staff rejected, in part, AT&T's offer of settlement in the above captioned docket. Since that time, you and I have had an opportunity to discuss Staff's concerns with AT&T's proposal. Let me take this time to thank you and other members of the Staff for your continued efforts to settle this docket and your willingness to explore options that might result in its resolution.

I am pleased that through our discussions and presentations surrounding these issues, Staff has concluded that AT&T's settlement proposal demonstrates a commitment to correct slamming problems in the future. Indeed, the essence of any inquiry should be to ensure that the remedial action taken by the offending company is sufficient to prevent future occurrences of the offending conduct. AT&T's commitment here is clear.

In addition to the efforts offered by AT&T in its letter dated September 1, 1998 (incorporated by reference and appended as Attachment A), Staff has asked AT&T to consider, as part of the settlement, an agreement to verify a percentage of written LOAs. This request is consistent with AT&T's continuing efforts to manage its face to face marketing efforts to avoid fraudulent conduct by both vendors and consumers. AT&T, therefore, will agree to verify 100% of all LOAs received during the course of its face to face consumer marketing efforts for a period of six months after the date an Order in this docket is signed. Customer identification will be required by the AT&T representative and will be subsequently verified by a third party prior to the change. This effort, in conjunction with

AT&T's Mystery Shopper Program and new Zero Tolerance Policy for vendors and employees should go far to deter fraudulent conduct.

AT&T also reiterates its offer to provide a warm transfer of calls to the Commission Consumer Affairs offices directly to the AT&T Slamming Resolution Center.

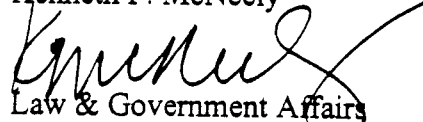
In the Staff counteroffer dated September 10, 1998, Staff noted that the \$200,000 offered by AT&T to settle this docket was woefully inadequate. Rather, Staff proposed \$4,575,000. While I do not agree with the assessment of AT&T's prior offer, AT&T sincerely wishes to assure the Staff and Commission of its commitment to eradicate slamming. I have had an opportunity to review the settlements recommended by the Staff and accepted by the Commission in several other slamming show cause dockets. AT&T will offer a monetary settlement consistent with that offered by similarly situated carriers. My review shows that MCI paid \$1,751 per alleged infraction, LCI paid \$1,549 per alleged infraction and Sprint, \$1,415 per alleged infraction. (See Attachment B) Staff's proposed fine to AT&T of \$25,000 per alleged infraction is dramatically higher than that paid by other carriers. In an effort to settle this docket, AT&T offers as a voluntary payment to the State of Florida general revenue the sum of \$287,493. This amount represents the average of the payments per complaint paid by the three largest carriers to date or \$1,571. This average was then multiplied by the 183 infractions assessed against AT&T. ( $\$1,571 \times 183$ ) AT&T believes that this methodology is fair and reasonable and brings AT&T's payment in line with that paid by other carriers. Clearly this amount, coupled with the other procedures which AT&T has agreed to implement and which cost over \$100 Million, demonstrates AT&T's leadership and commitment to eradicate slamming.

Staff also inquired about simultaneous settlement of Case No. 98-2445RP; Florida Competitive Carriers Association, Inc. et al v. Florida Public Service Commission. AT&T is very interested in resolving this case short of litigation. Indeed, AT&T, along with other petitioners, has had many meetings with Staff and Public Counsel to draft compromise language. Several iterations have been exchanged. As I understand it, there has been substantial agreement of at least parts of the rules. Because this case encompasses several carriers, two associations, two public agencies and includes rules that would apply to the entire telecommunications industry, AT&T cannot in this docket incorporate proposed modifications to the new rules. AT&T, however, will continue its efforts to reach a resolution of these rules through the channels identified by the Staff and Public Counsel.

I understand that the Agenda before which this offer will be considered has been moved to October 6, 1998 from November 3, 1998. I also understand that a Staff recommendation may already be published. I do hope however, that you will give this offer consideration prior to the October Agenda session.

Please feel free to contact me if you have any questions.

Kenneth P. McNeely



Law & Government Affairs  
Vice President - Florida

cc: Richard Moses  
Kelly Biegalski  
Michael Gross  
Charles Beck





Attachment A

Kenneth P. McNeely  
Law & Government Affairs  
Vice President - Florida

Suite 700  
101 N. Monroe St.  
Tallahassee, FL 32301  
850 425-6360  
FAX: 850 425-6361

September 1, 1998

Richard Moses  
Martha Brown  
Catherine Bedell  
Kelly Biegalski  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Michael Gross  
Department of Legal Affairs  
Office of the Attorney General  
107 West Gaines Street  
Tallahassee, Florida 32399-1050

Charles Beck  
Office of Public Counsel  
111 West Madison Street  
Room 812  
Tallahassee, Florida 32399-1400

***Re: Proposed Settlement of Docket No. 971492-TI***

I wanted to thank you for taking the time last week to meet with me and my colleagues to discuss settlement of the Florida Public Service Commission's show cause docket investigating slamming complaints against AT&T Communication's of the Southern States, Inc. ("AT&T"). As I stated during our meeting, AT&T takes very seriously its leadership role in preventing slamming nationally. Though I would have preferred that our public efforts been commenced sooner, I believe that the great strides that AT&T has taken are certain to curtail the problem and raise the bar for other carriers.

AT&T entered into a negotiated settlement of its first show cause proceeding regarding alleged slamming complaints late in 1996 and made a voluntary payment of \$30,000 in January 1997. Immediately thereafter, AT&T put into motion the necessary steps to create what is now the AT&T Customer Slamming Resolution Centers ("CSRC"s). These steps included preparing methods and procedures along

with training materials to begin staffing. These centers accepted their first calls on January 1, 1998. As you saw in my video presentation last week, these centers have now become the standard bearer for slamming prevention.

Admittedly, AT&T procedures in place prior to the opening of the CSRCs failed to determine the root cause of many of the complaints lodged against AT&T for slamming. AT&T's priority was to immediately restore the customer to its carrier of choice, no questions asked. These procedures were insufficient at that time to systematically identify the bad acts of contractors of AT&T charged with marketing to consumers through AT&T's face-to-face channels or to identify other systemic problems in our processes. Now that the CSRCs have opened, AT&T is now identifying the root cause, satisfying the customer in real time, and rectifying the problem by analyzing the collected data. These actions taken by AT&T address the concerns raised by Staff in its recommendation in this docket.

Because AT&T desires to settle the claims brought against it by the Florida Public Service Commission and recognizes that despite its efforts it could always improve in this very important area, AT&T, without admitting liability, proposes the following in full settlement of the claims:

1. Make a voluntary payment to the State of Florida general revenue fund in the amount of \$200,000. For purposes of settlement, AT&T concedes that its records are incomplete for 8 of the complaints subject to this investigation. Accordingly, AT&T will pay \$25,000 for each infraction pursuant to Section 364.285 F.S. Inasmuch as this is only AT&T's second investigation, this amount is reasonable and consistent with the methodology used to compute the settlement amount of other carriers.

Additionally, as discussed last week, AT&T will:

2. Create and maintain the Customer Slamming Resolution Centers as a dedicated resource to resolve slamming inquiries and collect data to monitor and assist in identifying trends and resolving them in furtherance of AT&T's Zero Tolerance Policy.
3. Continue deployment of "AT&T Branding/Time At Destination" offering for 1+ calls which identifies callers as AT&T customers when a 1+ call is placed. This new offering alerts callers that they are AT&T customers immediately.
4. Discipline employees found to have violated AT&T's Zero Tolerance Policy up to and including termination.
5. Increase consumer awareness of the AT&T Customer Slamming Resolution Centers by the use of media advertisements and including phone number in the welcome packages of residential customers switched by AT&T.

6. Institute to the "AT&T Mystery Shopper Program" as a quality control measure on AT&T's face-to-face marketing efforts.

7. Offer a warm transfer of calls from the Florida Public Service Commission to AT&T's Customer Slamming Resolution Centers to assist in resolving slamming inquiries.


8. Terminate relationships with vendors that do not comply with AT&T's Zero Tolerance Policy against slamming.

AT&T makes this good-faith attempt to settle the claims against it arising out of this docket. AT&T's efforts taken to prevent slamming are unprecedented. AT&T has spent over \$100 Million over the last two years to shore up its prevention efforts through the use of innovative technology and the addition of dedicated resources. By these actions, AT&T hopes to send a clear signal to other carriers and the vendor community that slamming has no place in our industry.

I would be happy to discuss further with Staff, Public Counsel or the Attorney General this settlement offer. If you find these terms satisfactory, I will draft a more formal settlement agreement memorializing this offer for execution by all parties.

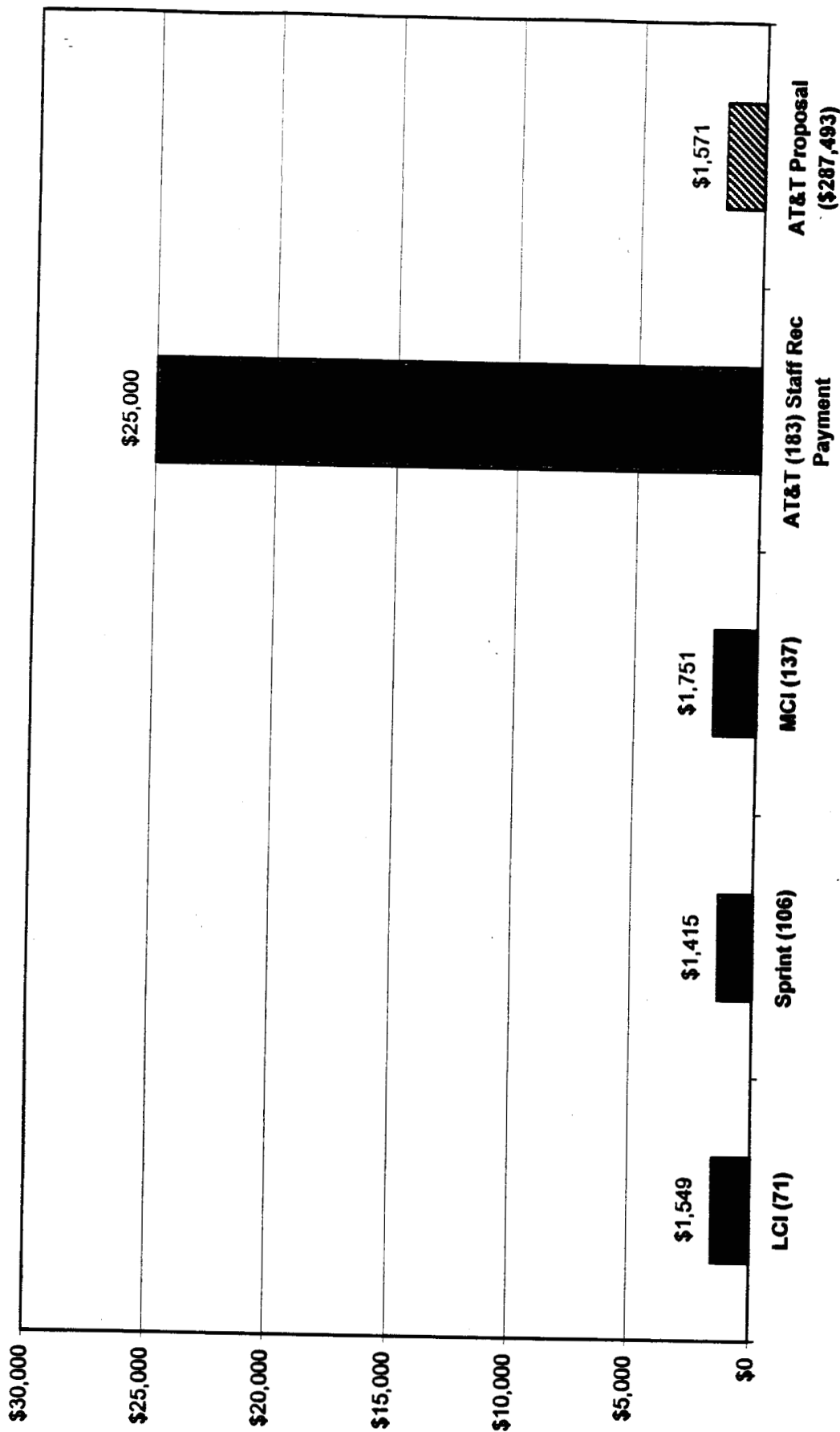
Best regards.

Kenneth P. McNeely



Law & Government Affairs  
Vice President - Florida

# Payment Per Complaint



Attachment B