

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of AT&T COMMUNICATIONS)	DOCKET NO. 870347-TL
OF THE SOUTHERN STATES for Commission)	
Forbearance from Rules 25-4.495(a) and)	ORDER NO. 23186
25-24.480(1)(b), F.A.C., for a trial)	
period.)	ISSUED: 7-13-90
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 BETTY EASLEY
 GERALD L. GUNTER
 FRANK MESSERSMITH

PROPOSED AGENCY ACTIONORDER EXTENDING FORBEARANCE TRIAL

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 formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

On July 11, 1988, this Commission granted AT&T Communications of the Southern States, Inc. (ATT-C) forbearance from traditional rate base rate of return regulation for a trial period of two years. That decision, set forth in Order No. 19758, issued August 3, 1988, was in response to a petition filed by ATT-C and represented a major shift in our regulatory policy toward ATT-C. In the past, our policy regarding ATT-C was traditional rate base rate of return regulation. However, we had not actually applied this policy to ATT-C since divestiture, when ATT-C became a separate entity. We had set no specific rate of return for ATT-C and had conducted no rate cases for the Company. Nonetheless, this Commission may institute rate base regulation of ATT-C at any time we find it in the public interest.

The interexchange market structure is in a process of

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transition from one historically characterized as a monopoly, having little if any competition, to one for which there is evidence that some competition exists. Traditional rate base regulation is appropriate under a monopoly market structure. However, given the transitional nature of the interexchange market at this time, traditional rate base regulation may not be the appropriate regulatory device.

In addition, there is a school of thought that considers rate base regulation to be inherently flawed. These critics contend that it does not provide the incentives for the regulated company to be efficient, innovative, or to introduce new services. They argue that because the regulated company's profit is constrained by a rate of return set by the regulatory body, there is no incentive for the regulated company to increase its profits beyond the authorized return. Should the regulated company begin to experience excess profits in one area, it will be forced to reduce rates of other services to keep overall profits within the authorized ceiling. Confronted with this penalty for efficiency, regulated companies have the perverse incentive to engage in inefficient activities such as inflating the rate base by purchasing unnecessarily expensive or extravagant items, a practice known as "gold plating". Under traditional rate base regulation such behavior would be rewarded because the company would receive both a return on its investment and reimbursement of expenses. Therefore, this Commission was searching for a regulation methodology that would inspire the regulated utility to perform more efficiently.

The Commission's intent with forbearance was to test the interexchange market over a trial period to determine if it is sufficiently competitive to regulate ATT-C's earnings and provide incentives for ATT-C to introduce new services and exercise management efficiency. During the two year trial, periodic reviews have been conducted to assess ATT-C's responses to the competitive market.

Order No. 19758 Docket No. 870347-TI states:

This experiment began on July 11, 1988, the date of the Special Agenda Conference in which we made our decision, running through July 10, 1990. We will review the results of this experiment after we have collected the data reflecting the entire two-year

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period. At that point, we will take whatever action seems appropriate, whether it be to impose full rate of return regulation on ATT-C, to extend the forbearance period, or to choose some other alternative method of regulating ATT-C that appears to be more in the public interest.

At the conclusion of the two year experiment, on July 10, 1990, ATT-C is required to file a concluding report on the first six months of 1990. Our Staff will then need to perform a final analysis on the market factors for the first six months of 1990. Because of the time needed for our Staff to perform these final analyses, we find it appropriate to extend our forbearance from rate base rate of return regulation of ATT-C until December 31, 1990. During this time, our Staff will analyze the results of the two year experiment and formulate its recommendation for our future course of action in regard to our regulation of ATT-C. In addition, on June 8, 1990, ATT-C filed a Petition for Further Relaxation of Regulation of AT&T. We will address ATT-C's petition in conjunction with the results of the two year forbearance experiment.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that our forbearance from rate base rate of return regulation of AT&T Communications of the Southern States, Inc., is hereby extended six months through December 31, 1990. It is further

ORDERED that this docket shall remain open to address the disposition of this experiment after December 31, 1990.

By ORDER of the Florida Public Service Commission,
 this 13th day of July, 1990.


 STEVE TRIBBLE, 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 120.59(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.

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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on August 6, 1990.

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, and as reflected in a subsequent order.

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 adversely 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 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 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.