

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause ) DOCKET NO. 940253-TI  
proceedings against AT&T ) ORDER NO. PSC-94-1364-FOF-TI  
COMMUNICATIONS OF THE SOUTHERN ) ISSUED: November 10, 1994  
STATES, INC. for violation of )  
Rule 25-4.118, F.A.C., )  
Interexchange Carrier Selection. )  
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The following Commissioners participated in the disposition of this matter:

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

ORDER CLOSING DOCKET

BY THE COMMISSION:

This docket was opened to determine whether to initiate show cause proceedings against AT&T Communications of the Southern States, Inc. (ATT-C) for violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection. In pertinent part, Rule 25-4.118 reads as follows:

(2) The LEC shall also accept PIC change requests from a certificated IXC on behalf of the customer. A certificated interexchange company (IXC) that will be billing customers in its name may submit requests for PIC changes directly or through another IXC to a LEC only if it has certified to the LEC that at least one of the following actions has occurred prior to the PIC change request: (emphasis supplied)

Generally, a reseller interexchange carrier (IXC) may contact ATT-C customers and obtain permission to change the customer's underlying carrier and substitute the reseller's services. When the customer agrees, the reseller notifies ATT-C who then changes the customer's primary interexchange carrier (PIC) code with the LEC. AT&T Bill Manager Service, a division of AT&T Communications, Inc., a separate corporate entity from ATT-C, then bills the customer on behalf of the reseller IXC. Unfortunately, this process often happens without the actual permission of the customer. The Commission has received numerous complaints stemming from the unauthorized change of customers' presubscribed IXCs.

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The change of a customer's PIC code without permission is known as "slamming." This Commission's Division of Consumer Affairs estimates that more than one hundred slamming complaints have been received against uncertificated companies reselling AT&T's service. The unauthorized PIC exchanges were submitted to ATT-C, who in turn submitted them to the LECs.

At the March 22, 1994 Agenda Conference, we considered whether ATT-C should be required to show cause as to why it should not be fined for assisting in the unauthorized PIC changes. ATT-C argued that, under Rule 25-4.118, it should not be held responsible for aiding and abetting the slamming of its customers. ATT-C insisted that it has no control and cannot exert any control over the actions of resellers that continue to slam Florida telephone subscribers. Finally, ATT-C argued that the history of the adoption of Rule 25-4.118 precluded interpretation of that Rule in the fashion initially proposed by our staff. ATT-C pointed to the industry proposed modification of the original proposed PIC change rule language underlined above which appears to insulate ATT-C from responsibility for the PICs it changes on behalf of third parties.

Often the reseller for which the PIC is changed is not the same as the reseller for whom AT&T Bill Manager Service bills. A typical complaint is that a third party misrepresents itself as "AT&T" and that billing is from AT&T Bill Manager Service on behalf of some other IXC. Because AT&T Bill Manager Service is a separate corporate entity from ATT-C, ATT-C claims no responsibility for its actions. The language of the Rule underlined above is relied upon by both ATT-C and AT&T Bill Manager Service to insulate themselves and other underlying carriers from any responsibility for their part in changing a subscriber's carrier without the subscriber's permission.

Upon consideration, Rule 25-4.118 does not, at this time, clearly hold ATT-C or AT&T Bill Manager Service responsible for slamming. Accordingly, no show cause order will be issued and this docket shall be closed. We note, however, that continuing high levels of slamming complaints plus the assistance provided to uncertificated entities by underlying carriers such as ATT-C provide ample justification for now eliminating the underlined portions of the rule above. Therefore, we will institute rulemaking to determine how to close the current loophole in Rule 25-4.118 so that the carrier submitting the PIC change to the LEC will be responsible for ensuring that the change is authorized by the subscriber.

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Based on the foregoing, it is

ORDERED that this docket be and the same is hereby closed.

By ORDER of the Florida Public Service Commission, this 10th  
day of November, 1994.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Flynn  
Chief, Bureau of Records

( S E A L )  
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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.