BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause proceedings against Combined Companies, Inc. for violation of Rules 25-4.118, Interexchange Carrier Selection, and 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required.	DOCKET NO. 961458-TI ORDER NO. PSC-97-0179-FOF-TI ISSUED: February 18, 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

ORDER TO SHOW CAUSE

BY THE COMMISSION:

On June 21, 1996, we received a complaint from Killearn Brokers Realty, Inc. (customer or Killearn Brokers). The customer complained that its long distance service had been switched from AT&T to Combined Companies, Inc. (CCI) without the customer's knowledge or authorization. In addition, Killearn Brokers was suddenly faced with a "True Up Charge" in the amount of $3,959.03. Commission staff requested information from AT&T about the situation by letter dated July 1, 1996.

AT&T responded on July 26, 1996, and stated that CCI had purchased service from AT&T for resale. (See Attachment 1). AT&T further stated that CCI resells these services at volume discounts. AT&T asserted that CCI is AT&T's customer and the end-user, Killearn Brokers, is CCI's customer. Additionally, AT&T stated that pursuant to its tariff on file with the FCC, CCI is liable for shortfall charges if it does not meet a certain revenue commitment each year. According to AT&T, CCI did not meet its revenue requirement. As a result, AT&T stated that shortfall charges were billed by it in accordance with its interstate tariff, initially on a prorated basis, to all locations on CCI's plan. AT&T further stated that

> [I]t is CCI (as AT&T's customer) which is liable to AT&T for payment of these charges. These charges will soon be

> transferred to a bill directed to CCI itself. Until CCI pays these charges, the discounts otherwise received under AT&T's tariffs will be applied to offset the shortfall charges. As a result, these discounts likely will not appear on the bills prepared by AT&T, at least for an interim period.

Commission staff then requested information from CCI on August 1, 1996, and received a letter in response dated September 12, 1996. (Attachment 2). CCI stated, in part, that in 1994, CCI entered into discussions with Killearn Brokers Realty and other companies to acquire discounts on their AT&T Term Plans. CCI denied that it is providing interexchange service within Florida. In its initial complaint, however, Killearn Brokers stated that it had never authorized CCI to enter into any agreement on its behalf with AT&T. Killearn Brokers Realty further stated that it had no knowledge of any contact with a CCI representative.

Our Division of Consumer Affairs received more complaints about AT&T and CCI during the investigation of the Killearn Brokers' complaint. The complaints were from Getzen and Hagin, Private Attorneys. Getzen and Hagin reported similar experiences with CCI as those of Killearn Brokers Realty.

As the complaint pertains to AT&T, we note that the FCC has addressed the problem with AT&T's bills issued on behalf of CCI. (Attachment 3). As a result, AT&T modified its billing to remove the AT&T brand and/or logo from bills it issues on behalf of its resellers. As of yet, these modifications have not been put into effect . Our staff is, however, still investigating AT&T's role regarding the complaints in Docket No. 961459-TI.

As a result of our investigation, we have determined that CCI is not certificated. We do, however, believe that the company is providing service in Florida as a multiple location discount aggregator as defined in Rule 25-4.003(32), Florida Administrative Code. As such, CCI is required to be certificated.

Rule 25-4.003(32), Florida Administrative Code defines a "Multiple Location Discount Aggregator (MLDA)" as:

> An entity that offers discounted long distance telecommunications services from an underlying interexchange company to unaffiliated entities. An entity is a MLDA if one or more of the following criteria applies:
>
> (a) It collects fees related to interexchange telecommunications services directly from subscribers,

(b) It bills for interexchange telecommunications services in its own name,
(c) It is responsible for an end user's unpaid interexchange telecommunications bill, or
(d) A customer's bill cannot be determined by applying the tariff of the underlying interexchange company to the customer's individual usage.

Rule 25-24.470, Florida Administrative Code, states:

(1) No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected until the effective date of a certificate, if granted. However, acquisition of equipment and facilities, advertising and other promotional activities may begin prior to the effective date of the certificate at the applicant's risk that it may not be granted. In any customer contacts or advertisements prior to certification, the applicant must advise the customer that certification has not and may never be granted.

In this instance, a show cause is warranted because CCI is apparently an interexchange carrier operating as a Multi-Location Discount Aggregator (MLDA), which according to Rule 25-4.003 (18), Florida Administrative Code, is a category of Interexchange carrier. CCI is not certificated to provide intrastate interexchange telephone service; therefore, it appears to be in violation of Rule 25-24.470, Florida Administrative Code.

CCI denies that it is providing interexchange service within the state of Florida. CCI further asserts that it is not collecting deposits or accepting payments for any service billed under its name to any end-user in the state of Florida. However, AT&T has identified CCI as a reseller of AT&T Term Plans. CCI stated in its response to our inquiry, dated September 12, 1996, "In late October 1994, CCI entered into discussions with several companies to acquire their AT&T Term Plans as part of a master plan that would provide additional services, including deeper discounts, to numerous small to medium-sized AT&T customers." (See Attachment 2) This statement indicates that CCI has, in fact, been acting as a MLDA.

Furthermore, we believe it is appropriate to proceed with a show cause because CCI switched AT&T subscribers to CCI without the subscribers' consent (slamming) in violation of Rule 25-4.118, Florida Administrative Code. Rule 25-4.118 states, in 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.

Based on the foregoing, we find that Combined Companies, Inc. shall be required to show cause why it should not be fined up to $25,000 per day pursuant to Section 364.285, Florida Statutes, for violations of Rule 25-4.118, F.A.C., Interexchange Carrier Selection, and Rule 25-24.471, F.A.C., Certificate of Public Convenience and Necessity Required.

Furthermore, we, hereby, direct our staff to investigate what, if any, progress AT&T and its billing subsidiaries have made in removing the AT&T/subsidiary logo from all bills issued on behalf of resellers and which of these companies still retain their logo in such bills. We believe AT&T's practice of including its logo on bills issued for resellers is misleading and has created a great deal of confusion for some customers. Thus, we also seek some indication as to whether AT&T and its subsidiaries plan to continue this sort of billing practice.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that Combined Companies, Inc. shall show cause in writing why it should not be fined for Rule violations as described in the body of this Order. It is further

ORDERED that Combined Companies, Inc.'s response shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order in the manner and by the date set forth in the Notice of Further Proceedings or Judicial Review section of this Order shall constitute an admission of the violations described in the body of this Order, and waiver of the right to a hearing. It is further

ORDERED that this docket shall remain open pending resolution of this proceeding.

By ORDER of the Florida Public Service Commission, this 18th day of February, 1997.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

BC

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.

This order is preliminary, procedural or intermediate in nature. 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 25-22.037(1), 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 10, 1997.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any 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.

ATTACHMENT 1

Doris Franklin
Manager-Regulatory Affairs

Suite 700
101 N. Monroe Street
Tallahassee, FL 32301
904 425-6340

July 26, 1996

Mr. Rick Moses
Division of Communications
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Mr. Moses:

Re: Combined Companies, Inc.

This is in response to your July 1, 1996, letter regarding complaints received from Killearn Brokers Realty, Inc. and Road Runner Travel Resort AT&T's records reflect that these companies are customers of Combined Companies, Inc. (CCI) and not customers of AT&T. As you know, companies like CCI routinely purchase service from AT&T and other facilities-based carriers at volume discounts, and utilize the networks of such carriers to, in turn, provide service to their own customers under terms and prices which they set by tariff or otherwise. In other words, CCI is a customer of AT&T, and Killearn Brokers Realty and Road Runner Travel Resort are customers of CCI.

AT&T files tariffs with the Federal Communications Commission (FCC) that spell out customer requirements and commitments. (A copy of the pertinent tariff page from Tariff F.C.C. No. 2 is enclosed.) Pursuant to the tariff provisions which apply to the 800 service that CCI purchases from AT&T, CCI directs AT&T to forward bills directly to the locations on its plans. Also pursuant to the tariff, CCI is liable to AT&T for shortfall charges if it does not meet a certain revenue commitment each year. The charges referred to in your letter are shortfall charges billed because the annual revenue commitment was not met. The tariff provides that such shortfall

charges are to be billed initially to all of the locations on a customer's plan on a prorated basis. This is precisely what was done, resulting in the charges on the bills of Killearn Brokers Realty, Inc. and Road Runner Travel Resort. Ultimately, however, it is CCI (as AT&T's customer) which is liable to AT&T for payment of these charges. These charges will soon be transferred to a bill directed to CCI itself. Until CCI pays these charges, the discounts otherwise received under AT&T's tariffs will be applied to offset the shortfall charges. As a result, these discounts likely will not appear on the bills prepared by AT&T, at least for an interim period.

Rule 25-24.4701, Florida Administrative Code, specifically requires "each certificated carrier" to place certain language in its intrastate tariff. Such language must state that "customers reselling or rebilling such services must have a Certificate of Public Convenience and Necessity as an interexchange carrier from the Florida Public Service Commission." AT&T Communications of the Southern States, Inc. has complied with that requirement. The language required by the rule is contained in AT&T's intrastate tariffs, and has been included in such tariffs for some time. Additionally, AT&T has procedures to notify potential reseller customers of this requirement.

Also, the above referenced rule requires "each certificated interexchange company" to implement procedures to "identify and report those customers whom it believes are reselling or rebilling interexchange telecommunications service on an intrastate basis in Florida." Additionally that subsection provides that "each certificated interexchange company" will provide a list of such customers' names and addresses to the Commission within thirty days of a written request by the Staff. AT&T Communications of the Southern States, Inc., which is the certificated carrier providing interexchange telecommunications services in Florida, has provided such a list in the past and stands ready to do so in the future.

One of the documents included with your July 1 letter was a letter dated June 17 which CCI apparently sent to many of its customers regarding the shortfall charges on their bills. This letter contained many false statements, and in order to set the record straight AT&T found it necessary to send its own letter (dated June 27, copy enclosed) to end users inquiring about these charges. The letter not only explains the charges, but also the relationship between AT&T, CCI, and end users.

Hopefully, this responds to your concerns regarding this matter. Please call me if you have any additional questions.

Yours very truly,

Doris M. Franklin

Enclosures

ATTACHMENT 2

Combined Companies, Inc.

September 12, 1996

Ms. Paula J. Isler
Research Assistant
Bureau of Service Evaluation
Public Service Commission
2450 Shumard Oak Blvd
Tallahassee, FL 32399-0850

Delivered Via Facsimile and US Mail

Dear Ms. Isler:

As discussed August 19, 1996, please find following our response to your letter of August 1, 1996, regarding two complaints received by your offices from Florida customers, which are directly related to an on-going legal struggle between Combined Companies, Inc and AT&T

First, let me address the specific statements and conclusions formed within your letter, that in our opinion, are factually incorrect:

1 Combined Companies, Inc. (CCI) is not "providing intrastate interexchange telephone service" within the state of Florida, or in any other state. Additionally, CCI is not "collecting deposits" or "accepting payment" for any service billed under its name for any end-user in the state of Florida or any other state.

2 Notwithstanding anything AT&T might claim, CCI has taken no steps to alter the relationship between any end-user within any AT&T Term Plans with which we might be associated For instance, AT&T's statement to certain of these end-users indicating that "you are a customer of Combined Companies, Inc" and "not a direct customer of AT&T", when referring to complaining customers, is simply not true. The relationship that existed, as between the customer and AT&T, prior to this "short-fall" episode is exactly the same as the relationship these customers previously had with AT&T. Which, I suggest could be best categorized as a "customers of convenience" relationship. When its convenient for them to be acknowledged as customers of AT&T (in those times when there are no problems), then they are customers of AT&T. However, if a problem exists (such as now with the disputed issue of short-fall), then they are someone else's customers (such as CCI's).

We know this to be the case since we have been trying since December 1994 to direct AT&T to accept our order to move these very same "customers" to deeper discount plans But, AT&T has steadfastly and consistently refused those orders.

- 9851 West Commercial Blvd., Suite 5-E, Tamarac, FL 33319 -
(954) 726-2666, (954) 726-2707 fax

3 The short-fall charges were placed on end-user bills by AT&T directly. CCI never directed AT&T to place the charges on anyone's bill. And, as you might imagine, these charges are very much in dispute; as in our opinion, they should have never been posted to either CCI, or any other customer in the first place. The charges are not for actual usage provided any customer And according to a Federal Judge are illusionary. However, CCI did everything it could do, consistent without understanding of AT&T's procedures, policies, tariffs and agreements to avoid this problem from getting started in the first place.

4 Since CCI did not invoice, nor did we direct AT&T to invoice, these charges, we are unable to have them removed from customer's billing However, with no apparent regard at all for the validity of the charges, or the problems that have been caused by them we understand AT&T itself has removed the charges from customer's bills This, of course, only further validates our position that this charges were always inappropriate (see AT&T invoice whereby charges are removed and labeled "Misapplied") Hopefully, this action is because they have come to the correct conclusion that the charges were inappropriate in the first place; since their tariff would mandate their collection from the customers it originally invoiced if otherwise.

5 AT&T would have us believe that somehow CCI has the power and influence to direct AT&T to do certain things, that it would otherwise not do However, I'm confident that this notion, once scrutinized will be revealed for what it is, as just another attempt by AT&T to avoid meeting its responsibilities to its customers. After all, if one is to believe the letter they sent to the thousand's of customer's, who complained about short-fall charges (which they inappropriately assessed, see AT&T letter dated June 27, 1996), you would conclude that AT&T has nothing to do with them It's all CCI's fault. Well nothing could be further from the truth

In closing, let me address how CCI came to be associated with AT&T (and the customers within Florida that are the subject of your most recent letter to our company).

In late October 1994, CCI entered into discussions with several companies, to acquire their AT&T Term Plans as part of a master plan that would provided additional services, including deeper discounts, to numerous small to medium size AT&T customers. These plans, all held directly with AT&T, had collectively in excess of 15,000 customers, many of whom had been AT&T customers, and within the very same plans, for over five years.

CCI submitted several orders in December 1994, and again in January 1995, to direct AT&T to transfer several of the plans to CCI. Although AT&T at first initially processed certain of CCI's

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orders, it later declined to process any of the orders and revoked the orders that it had previously processed, thereby requiring CCI to go to court in an attempt to compel the transfer.

Thereafter, CCI was successful in obtaining two preliminary injunctions by the United States District Court, District of New Jersey. These injunctions required AT&T to move the plan(s) and the traffic as CCI had requested. This transfer would have not had any adverse effect on any customer within the plan, as each customer would continue to remain with AT&T and receive AT&T service, AT&T billing, and all discounts (plus additional discounts) which had previously been made available to these customers. AT&T appealed the judge's ruling, and the matter is now presently before the Federal Communications Commission (FCC).

Because of the pending litigation, and therefore lack of closure on the transfers, CCI has not had any contact, or developed any relationship, with any customer within any of these plans. However, and as mentioned earlier, contrary to what AT&T may have indicated, neither CCI, nor any court order has instituted any change in the relationship any customer has had with AT&T. Any unfortunate difficulties that these customers, including our company, are now experiencing, such as AT&T refusal to grant credits, its denials that these customers are even AT&T customers, and any other similar actions are not the result of any positions or actions taken by CCI. These are unilateral positions taken by AT&T itself, and are an unfortunate litigation tactic employed by AT&T to unfairly prejudice CCI in connection with its lawsuit.

Hopefully, this responds to your concerns regarding this matter. However, if additional information is required, please don't hesitate to contact me.

Sincerely,

Larry G. Shipp

/LGS

Enclosure(s)

• 7951 West Commercial Blvd., Suite 5-H, Tamarac, FL 33319 •
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ATTACHMENT 3

Federal Communications Commission
Washington, D.C. 20554

November 25, 1996

Mr. J. Alan Taylor
Chief, Bureau of Service Evaluation
Division of Communications
State of Florida Public Servic Commission
Captial Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Dear Mr. Taylor:

Mary Beth Richards, Deputy Bureau Chief of the Common Carrier Bureau, asked me to respond to your letter of September 19, 1996 inquiring about the FCC staff's views on AT&T's billing arrangements with its resale carrier customers. You stated that AT&T was issuing end-user billing statements on behalf of resale carrier customers labeled with AT&T's logo and not with the logos of the carriers for whom AT&T was performing the billing functions. Accordingly, you state that because of AT&T's billing practices, "subscriber[s] had no way of knowing that the service provider was not AT&T."

As part of your inquiry, you ask: 1) whether AT&T committed to cease billing this way; 2) what date AT&T agreed upon to stop; and, 3) whether the FCC Staff holds AT&T responsible as the carrier claiming the PIC when no other carrier is included on AT&T bills. To provide you with the most up-to-date answers on the first two questions, we asked AT&T's Government Affairs Office in Washington, D.C. to provide an update on AT&T's efforts to modify its billings programs. A copy of AT&T's response is enclosed. As AT&T explains in its letter, it undertook to modify its bills and remove the its brand and logo from these bills issued on behalf of resale carriers because the appearance of the AT&T brand and/or logo on such bills contributed to confusion among the resale carriers' end-user customers about the nature of AT&T's involvement.

AT&T also confirms in its letter that its ACUS product (part of AT&T's Bill Manager Service) was modified to remove the AT&T logo last April in time for the May billing statements." In addition, AT&T expects its modified location billing service (which is associated with its AT&T F.C.C. Tariff Nos. 1 and 2) to become operational on January 1, 1997. AT&T explains that it delayed the operational start of the location billing service in order to accommodate its reseller customer carriers' request for additional time in order to adjust their internal operations consistent with AT&T's modifications.

In order to answer your third and final question, I must first explain that the Commission has the statutory obligation, under Section 208 of the Communications Act of 1934, as amended, to serve complaints it receives about common carriers on all of the carriers that have or could have relevant information about these complaints. Under its rules of practice and procedure set forth in 47 C.F.R. §§1.711-1.718, the Commission ordinarily assesses responsibility or liability for the matters complained of only after the carriers involved have had an opportunity to satisfy the complaint and have failed to do so. It has been the staff's experience that the majority of consumer complaints received by the Commission are usually satisfied once they have been served on the relevant carriers and, therefore, require little or any further investigation by the staff.

Given this statutory service requirement and the complaint procedures contained in the Commission's rules , I would like to offer the following clarification of my earlier statement to you regarding AT&T's billing practices on behalf of its resale carrier customers. As you well know, consumers that have problems with their carriers are usually able to identify or track the problem through their carriers bills. In cases where the consumer is unable to identify in its complaint which carrier the consumer believes is at fault, or where the consumer's complaint arises out of the interaction of several carriers, the staff, in preparing the complaint for service as required by Section 208 of the Act, routinely examines the consumer's billing statement to identify and serve all of the relevant carriers that are or could be involved. Thus, my statement to you when we met in September was aimed at describing a process where if the billing statement carried only AT&T's logo and/or brand, the staff would routinely serve the complaint on AT&T (as well as the reseller carrier customer if that information was readily available) as a matter of course. It has been the staff's experience that AT&T subsequently directs these complaints to the appropriate parties and that these complaints are, for the most part, resolved the consumer's satisfaction. Because this process was cumbersome, confusing and added unacceptable delay to the Commission's resolution of consumers' complaints, however, the staff welcomed AT&T's proposal last winter to modify its billing systems by the spring of this year in order to address and alleviate the confusion among consumers. Needless to say, the staff eagerly awaits the completion of these changes.

I hope that this letter satisfies your inquiry. Please do not hesitate to call me at (202)418-0700 if you have additional questions or comments.

Sincerely,

John B. Wilcox, Chief
Enforcement Division

Enclosure

cc: Mary Beth Richards