

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

Talbott *WDT*
Vandiver *MAA*

M E M O R A N D U M

September 26, 1996

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

FROM: DIVISION OF COMMUNICATIONS (MOSES) *MSH MCB*
DIVISION OF LEGAL SERVICES (BROWN, RAMBANA)
DIVISION OF CONSUMER AFFAIRS (PRUITT) *AP BSA*

RE: DOCKET NO. 960626-TI - AT&T COMMUNICATIONS OF THE
SOUTHERN STATES, INC. - INITIATION OF SHOW CAUSE
PROCEEDINGS FOR VIOLATION OF RULE 25-4.118, F.A.C.,
INTEREXCHANGE CARRIER SELECTION

AGENDA: 10/08/96 - REGULAR AGENDA - INTERESTED PERSONS MAY
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\960626.RCM

CASE BACKGROUND

During 1995, the Division of Consumer Affairs received 279 complaints against AT&T Communications, Inc. (AT&T) concerning unauthorized carrier changes (slamming). The Commission staff continued to receive slamming complaints against AT&T during 1996. Of the slamming complaints filed against AT&T from January 1, 1996 through May 31, 1996, staff has verified that 141 were infractions (i.e. apparent violations of Rule 25-4.118, Florida Administrative Code).

Staff was concerned that in 1995, AT&T responded to 51 slamming complaints by either citing unexplained errors or providing no explanation for the unauthorized carrier change. Staff was also disturbed that consumers continued to file apparently valid complaints against AT&T during 1996. Consequently, on May 20, 1996, staff opened this docket to initiate show cause proceedings against the company for the apparent violations.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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Shortly after the docket was opened and before any recommendation was filed, AT&T requested a meeting with staff to discuss the complaints. At the meeting held on June 12, 1996, AT&T described how it was presently addressing complaints and also explained that it was still reviewing other complaints in order to determine if there were other issues that the company needed to address. AT&T also stated its intention to file a settlement proposal and asked that staff delay filing its show cause recommendation to allow the company time to complete its review of the consumer complaints.

On July 31, 1996, staff received a letter from AT&T (Attachment A) proposing an informal resolution to the docket. In its letter AT&T maintained that it had not knowingly or willfully violated any statute, rule, regulation or order, or engaged in any wrongdoing. AT&T's letter also outlined the results of its investigation and identified procedures it was initiating to reduce the processing errors that were contributing to slamming complaints. A monetary settlement of \$25,000 was also offered.

On August 7, 1996, staff responded to AT&T's letter (Attachment B). Staff's letter acknowledged the company's efforts to reduce the number of slamming complaints and also stated that it was our belief that \$50,000 was a more appropriate penalty for the apparent violations.

On August 30, 1996, AT&T replied to staff's letter (Attachment C) and offered to contribute \$30,000 to the general revenue fund of the State of Florida in addition to the process improvements included in its first settlement offer. Staff's recommendation deals with AT&T's August 30th settlement offer.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement proposed by AT&T Communications, Inc. as resolution of the apparent violations of Rule 25-4.118, Florida Administrative Code?

RECOMMENDATION: Yes.

STAFF ANALYSIS: The settlement offers submitted by AT&T (Attachments A and C) can be summarized as follows.

- 1) AT&T admits no liability or wrongdoing.
- 2) AT&T will contribute \$30,000 to the Florida Public Service Commission for forwarding to the Office of the Comptroller for deposit in the State General Revenue Fund within 30 days of the date the Commission issues an order accepting the settlement.
- 3) AT&T will implement an Inbound Quality Assurance Process, using a statistical sampling methodology to determine the number of complaints that are received from residential consumers whose PIC changes were the result of inbound telemarketing calls.
- 4) AT&T will require each representative that has face-to-face contact with a customer to place additional identifying information on the LOA form. AT&T will use this information to more accurately track each representative's PIC submissions and more promptly take appropriate action against any offending representative if necessary.
- 5) AT&T will establish a spot-check quality control inspection process.
- 6) AT&T will require persons signing LOAs to present (a) identification containing a signature for verification purposes, and (b) appropriate

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verification data such as date of birth
or social security number.

Staff believes the settlement conditions outlined adequately address AT&T's slamming complaints. If the Commission staff fails to see an improvement in the number of verified complaints, we have the option of opening a separate docket to address them at any time in the future. Therefore, we believe the \$30,000 payment AT&T has agreed to submit to the Commission should be accepted and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. This amount is reasonable and consistent with settlement payments made by other long distance companies in resolution of slamming activities.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed with the approval of Issue 1 and remittance of the \$30,000 settlement.

STAFF ANALYSIS: If the Commission accepts staff's recommendation in Issue 1 and upon remittance of the \$30,000 settlement by AT&T, this docket may be closed.

RECEIVED
FLORIDA PUBLIC
SERVICE COMMISSION



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Robin D. Dunson
Attorney
Law Division

MAIL ROOM July 29, 1996

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Rick Moses
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida



Re: Docket No. 960626 Initiation of Show Cause Proceedings against AT&T Communications of the Southern States, Inc.

Dear Rick:

The above-referenced docket was opened by the Staff of the Florida Public Service Commission ("Commission") to order AT&T to show cause why it should not be fined for those justified complaints received by Staff from consumers in 1995 and through June, 1996 alleging that AT&T changed the consumer's interexchange carrier to AT&T without authorization. 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. Moreover, AT&T has run many consumer awareness and educational campaigns to inform consumers about slamming and to provide consumers with information on remedies and dispute resolution channels if they are slammed.

AT&T maintains that it has not knowingly or willfully violated any statute, rule, regulation or order, or engaged in any wrong doing. Without admitting any liability or wrongdoing but in an attempt to resolve this matter, AT&T would like to propose an informal resolution in the above-referenced docket.

AT&T investigates each complaint that it receives and endeavors to obtain records from either its internal or external sources as promptly as possible in order to address the consumer's concerns in a timely fashion. The results of AT&T's investigation of the complaints received in 1996 are as follows:

- 136 of the complaints were unjustified. AT&T either has valid letters of authorizations ("LOAs"), third party verification records, signed checks, local exchange company submitted change orders, or inbound telemarketing records.
- Based on a visual inspection of 10 of the LOAs, it does not appear that the customer's signature as it appears on the complaint letter matches that of the LOA. These LOAs were submitted to AT&T by an outside agency. AT&T investigated the matter with

- this agency who confirmed that some of its representatives had engaged in "questionable/inappropriate" behavior. The representatives were promptly fired.
- For 8 of the complaints, AT&T either has been unable to retrieve the PIC change records or there was an encoding error in processing the switch.

Therefore, it appears that 10 of the complaints were the result of unauthorized acts of marketing representatives. Once AT&T determined that these representatives had violated AT&T's methods and procedures and engaged in inappropriate behavior, these representatives were terminated from AT&T's account. It also appears that 8 of the complaints were either the result of processing errors or unretrievable records.

During the year 1995, the Staff's records indicate that AT&T processed 140 unauthorized PIC changes. During the course of this proceeding, AT&T has re-investigated those slamming complaints to determine whether the complaints were justified. According to our records, 91 of those complaints were unjustified. It appears that due to internal problems and time constraints with responding to the Commission Staff, AT&T was unable to fully investigate these complaints within the requisite time frame initially.

Notwithstanding the results of any investigation, AT&T's top priority is customer satisfaction. If any customer disputes a PIC change and would like to switch back to their former carrier, AT&T pays all switching fees associated with the change. Thus, AT&T has paid (or is in the processing of paying) all switching fees for those customers who have requested to be returned to their former carrier.

However in an attempt to resolve this matter and better improve its processes and procedures, AT&T proposes the following resolution to this docket.

- In order to determine the incidents of slamming in the inbound telemarketing channel, AT&T will implement an Inbound Quality Assurance Process, using a statistical sampling methodology to determine the number of complaints that are received from residential consumers whose PIC changes were the result of inbound telemarketing calls.
- AT&T will require each representative that has face-to-face contact with a customer to place additional identifying information on the LOA form. This will allow AT&T to more accurately track each representatives' PIC submissions and determine if any inappropriate or questionable behavior has been engaged in by that representative. AT&T then will be able to take appropriate action against offending representatives quickly.
- AT&T is establishing a spot-check quality control inspection process. AT&T will have an unidentified "mystery shopper" attend face-to-face events posing as a consumer to determine the methods and procedures being utilized by the marketing representatives.
- AT&T will require persons signing LOAs to present (a) identification containing the person's signature to the AT&T representative for verification, and (b) appropriate verification data (e.g., the customer date of birth or social security number). The

verification data that will be required is the same as that currently obtained by AT&T under the FCC's regulations.

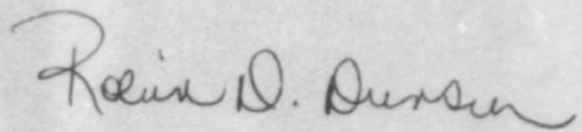
- This is the first time AT&T has been show caused for slamming in Florida. In addition to the process improvements committed to above, AT&T will make a voluntary contribution of \$25,000 to the general revenue fund of the State of Florida with no admission of liability or wrongdoing. This is the same voluntarily settlement amount that was contributed by MCI and approved and accepted by the Commission the first time MCI was show caused for more egregious behavior and without any proffered process improvements.

AT&T believes that the above procedures will reduce the incidents of errors or processing mistakes. We sincerely hope that the Staff will recommend to the Commission that our settlement proposal be accepted.

If your schedule permits, I will be more than happy to discuss this proposal with you on Wednesday.

Please do not hesitate to contact me if you have any questions or need any additional information.

Sincerely,



Robin D. Dunson

ATTACHMENTS

cc: Mike Tye
Doris Franklin
Misa Lawrence
Peter Jacoby

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



DIVISION OF COMMUNICATIONS
WALTER D'HAESELEER
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Public Service Commission

August 7, 1996

Ms. Robin D. Dunson
AT&T, Law Division
1200 Peachtree Street, N.E.
Atlanta, Georgia 30309

via facsimile 404/810-5901

Re: Docket No. 960626, Initiation of Show Cause Proceedings against AT&T Communications of the Southern States, Inc.

Dear Ms. Dunson:

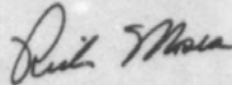
I have received your offer of settlement in the above referenced matter dated July 29, 1996. Based on your letter, it appears that AT&T has admitted to at least 67 instances of unauthorized carrier changes in Florida from January 1, 1995 through June 30, 1996.

I am pleased that AT&T is making an effort to reduce the number of slamming incidents through a change in procedures and that you have included these in your settlement proposal. However, in order to recommend approval of the settlement offer I believe a more significant monetary penalty should be included in the offer and that it should be characterized as a penalty payment rather than a voluntary contribution. I believe that \$50,000 is a more appropriate penalty due to the number of verified consumer complaints received, AT&T's failure to promptly take corrective action, and the penalties paid by other long distance carriers for similar violations.

Ms. Robin Dunson
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Please let me know by August 30, 1996, whether AT&T will be submitting another settlement offer. If another offer is not forthcoming, staff will file its recommendation based upon your offer dated July 29, 1996. If you have any questions, please contact me at 904/413-6582.

Sincerely,



Rick Moses
Eng. Supv.
Bureau of Service Evaluation

cc: Scott Edmonds, LEG
Kathy Lewis, CMU
Nancy Pruitt, CAF

c:\wp\2015



Robin D. Dunson
Attorney
Law Division

August 30, 1996

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Rick Moses
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida

Re: Docket No. 960626 Initiation of Show Cause Proceedings against AT&T Communications of the Southern States, Inc.

Dear Rick:

I received your letter dated August 7, 1996 in response to AT&T's settlement offer in the above-referenced docket. In your letter you indicate that although AT&T's proposed process improvements were satisfactory, in order to recommend approval of our settlement offer, you believe that AT&T should be required to pay \$50,000 and that the payment should be characterized as a "penalty payment" instead of a voluntary contribution. You also stated that you believed that a \$50,000 penalty payment was more appropriate because of (1) the number of "verified complaints", (2) AT&T's failure to take corrective action, and (3) the penalties paid by other long distance carriers for similar violations. AT&T disagrees with each of the premises for your statement, and does not believe that a \$50,000 payment is fair or reasonable.

You state in your letter that AT&T has "admitted" to at least 67 instances of unauthorized carrier changes.. However, AT&T has made no such admission. AT&T has not willfully violated or refused to comply with any statute, rule, regulation or order, or engaged in any wrong doing in connection with these complaints.

You also state that AT&T failed to take corrective action. On the contrary, as stated in AT&T's initial settlement proposal, when AT&T discovered that its methods and procedures were not being complied with by certain representatives from its marketing agencies, AT&T promptly took corrective action. These representatives, whose unauthorized acts were responsible for 10 complaints, were terminated from AT&T's account after discovery of the unauthorized behavior. 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. Nevertheless, out of the hundreds of thousands of Florida PIC change requests that AT&T processes every month, sometimes

errors do occur, despite AT&T's best efforts. In these instances, AT&T reimburses the customer for any switching fees assessed by the customer's local exchange company. Where appropriate, AT&T also provides adjustments to the customer's bill to compensate for the unauthorized carrier change.

Finally, you state that a \$50,000 penalty payment is more appropriate because of the "penalties" paid by other long distance carriers for similar violations. However in recent show cause dockets involving Heartline (Docket No. 960627-TI), MCI (Docket Nos. 960186-TL and 910205-TL), Furst Group Headquarters (Docket No. 950709-TI) and GE Capital Exchange (Docket No. 951420-TI), none of the payments made by any of these companies were characterized as "penalties." In each case, the company offered to pay a "voluntary contribution" to the General Revenue Fund without admitting any liability or wrongdoing. In each case, Staff recommended that such offers, as characterized, be accepted by the Commission. AT&T believes that it should be treated similarly.

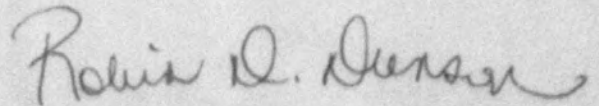
Moreover it appears that Staff's proposed payment of \$50,000 is not in line with what other interexchange carriers have paid for "similar violations." AT&T, in this proceeding, is attempting to settle the allegations of 67 customers that AT&T changed their carrier without authorization by voluntarily contributing \$25,000 to the general revenue fund. In MCI's first show cause docket, MCI also offered and the Commission accepted the same monetary contribution offer that AT&T has proposed to Staff, namely \$25,000. Yet, MCI's alleged violations were more egregious. There were 223 alleged slamming complaints against MCI-- 3 times the number at issue in this proceeding. Similarly, Heartline, as recently as 2 weeks ago, settled a show cause proceeding initiated against it for 273 unauthorized PIC changes by voluntarily contributing \$50,000 to the general revenue fund. Heartline's alleged violations were 4 times the alleged violations against AT&T in this proceeding. Moreover, MCI was show caused for the second time in 1995 for 192 slamming complaints and settled by contributing \$50,000 to the general revenue fund. However, MCI's violations were almost 3 times the number that is the subject of this proceeding.

AT&T believes it would be unfair to require all carriers to pay the same amount whether they are being accused of slamming 50 customers or 500 customers. AT&T's settlement offer is consistent with, if not more than, that paid by others for similar violations. For example, Furst Group's voluntary contribution offer of \$15,000 was accepted in settlement of 56 complaints. Similarly, AT&T has proposed to contribute \$25,000 for 67 complaints.

Notwithstanding the above and AT&T's strong belief that its first settlement offer was fair and reasonable, AT&T would like to make another good faith attempt to settle this matter in the interest of judicial economy. In addition to the process improvements AT&T proposed in its first settlement offer, AT&T proposes to contribute, instead of the \$25,000 originally offered, \$30,000 to the general revenue fund of the State of Florida without admitting any liability or wrongdoing. We sincerely hope that the Staff will recommend to the Commission that our settlement proposal be accepted.

Please do not hesitate to contact me if you have any questions or need any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Robin D. Dunson".

Robin D. Dunson

ATTACHMENTS

cc: Mike Tye, Esq.
Tracy Hatch, Esq.
Mrs. Doris Franklin
Misa Lawrence, Esq.
Peter Jacoby, Esq.