



Public Service Commission

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RECORDS AND REPORTING

DATE: June 18, 1998

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

FROM: DIVISION OF COMMUNICATIONS (OLLILA) *S.D.*
DIVISION OF LEGAL SERVICES (BEDELL) *CB MCB*

RE: DOCKET NO. 980699-TI - CONSIDERATION OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. AND D/B/A CONNECT 'N SAVE'S TARIFF FILING THAT INTRODUCES A UNIVERSAL CONNECTIVITY CHARGE (UCC) FOR RESIDENTIAL CUSTOMERS. (T-98-725 FILED 5/27/98)

AGENDA: 06/30/98 - REGULAR AGENDA - TARIFF FILING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\980699TI.RCM

CASE BACKGROUND

On May 27, 1998, AT&T Communications of the Southern States (AT&T) filed a tariff for its intrastate Universal Connectivity Charge (UCC), T98-725. The tariff, which only applies to residential customers, went into effect on May 28, 1998, pursuant to Rule 25-24.485(2)(b), Florida Administrative Code. Although the tariff went into effect on May 28, 1998, the UCC will be applied to charges that are billed on or after July 1, 1998.

AT&T's tariff requires that a 1.8 percent charge be added to residential customers' intrastate toll, Conference Service, AT&T Personal Number Services, and AT&T 800 Plan P Service charges, after any discounts have been applied.

AT&T states that it has designed the UCC to recover its contribution, assessed on its intrastate revenue, to the schools,

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libraries, and rural health care (SLRHC) portion of the federal Universal Service Fund. The FCC's Universal Service Order, CC Docket No. 96-45 (released May 8, 1997) (FCC Order), requires that the contributions used to fund the schools, libraries, and rural health care programs be assessed on the intrastate, as well as interstate, revenues of interstate telecommunications services providers. (FCC Order, ¶ 837)

The issue of the recovery of federal universal service contributions assessed on intrastate revenues recently came before this Commission. In Order No. PSC-98-0681-SC-TI, Docket No. 980435-TI, issued May 18, 1998, *In re: Initiation of show cause proceedings against MCI Telecommunications Corporation for charging FCC Universal service [sic] assessments on intrastate toll calls* (MCI Order), the Commission determined that MCI does not have the authority to recover its universal service contributions from a charge on intrastate toll calls. MCI's Federal Universal Service Fee (FUSF) seeks to recover universal service contributions from business customers' total billed revenues (that is, both interstate and intrastate revenues). MCI is also billing its business customers a charge designed to recover the amount of primary interexchange carrier charges (PICCs) assessed by the incumbent local exchange carriers (ILECs).

AT&T asserts that its UCC, while similar to MCI's FUSF, is designed to recover only AT&T's contribution to the SLRHC portion of the federal Universal Service Fund that is attributable to AT&T's intrastate revenues.

DISCUSSION OF ISSUES

ISSUE 1: Should this tariff be canceled?

RECOMMENDATION: Yes. This tariff should be canceled. The application of the intrastate Universal Connectivity Charge to customer bills is scheduled to begin on July 1, 1998; therefore, if any billing of this charge has begun, it should cease immediately. Any customer who receives a bill that includes the intrastate Universal Connectivity Charge should receive a credit for the amount billed in the next billing cycle. (OLLILA)

STAFF ANALYSIS:

AT&T's tariff of the intrastate UCC became effective on May 28, 1998, although billing of the intrastate UCC is scheduled to

begin July 1, 1998. In its tariff, AT&T states that this charge is applied only to residential customers, and then defines the Universal Connectivity Charge:

This charge applies to Consumer Telecommunications Services provided in this tariff to customers who are identified in AT&T's billing records as residential customers. The Universal Connectivity Charge is equal to 1.8% of the customer's AT&T monthly intrastate charges after the application of eligible discounts and credits. The Universal Connectivity Charge will be applied to charges billed on or after July 1, 1998, where billing is available. (AT&T Communications of the Southern States, Inc., General Services Tariff, A2.4.6, third revised page 19)

This charge also applies to "Conference Service, AT&T Personal Number Services, and AT&T 800 Plan P Service provided in this tariff to customers who are identified in AT&T's billing records as residential customers." (AT&T Communications of the Southern States, Inc., Customer Network Services Tariff, C2.5.6, third revised page 6)

In its letter accompanying its tariff filing, AT&T describes its reasons for introducing this charge:

Through this charge, AT&T seeks to recover the Florida-specific, intrastate pro-rata portion of the Universal Service Fund ("USF") contribution that AT&T pays solely for the support of schools, libraries, and rural healthcare providers, including the many qualified entities in Florida that have applied for benefits under the program.

AT&T states in its letter that it "is aware that the Commission has expressed concern over a cost recovery methodology instituted earlier by MCI," and that it "has attempted to address some of the Commission's concerns." Unlike MCI, AT&T has filed an intrastate tariff. AT&T also asserts that the UCC is designed to recover only AT&T's contribution to that part of the USF that requires contributions based on an assessment of intrastate revenues, i.e., schools, libraries, and rural health care programs. AT&T also states what it is not doing with this tariff, viz; it is not attempting to recover any of its contributions to the USF based on its assessment of interstate revenues.

AT&T describes how the UCC is calculated:

AT&T's methodology is designed to avoid over-recovery from the intrastate jurisdiction. The Florida UCC is calculated on AT&T's total universal service contribution for schools, libraries and rural healthcare providers, separated between business and residential revenues, and adjusted by a factor (provided by the administrator of the federal USF) to determine the portion attributable to interstate and intrastate revenues. The interstate portion of the contribution is recovered by AT&T's federally-tariffed UCC. The intrastate portion of the contribution is recovered by AT&T's state-tariffed UCCs. The Florida UCC is designed to permit AT&T to recover from Florida customers of AT&T's intrastate services only their fair share of AT&T's contribution attributable to those services.

AT&T asserts that its "recovery in proportional part from intrastate revenues is reasonable, because it follows equitable cost causation principles."

Staff believes that the FCC Order unambiguously prohibits recovery of the SLRHC assessment through anything other than interstate rates:

As with recovery of the amounts carriers contribute to the high cost and low-income support mechanisms, we have decided to permit recovery of contributions for the support mechanisms for eligible schools, libraries, and rural health care providers solely via rates for interstate services. Indeed, our rationale is even more compelling for the support mechanisms for eligible schools, libraries, and rural health care providers because those mechanisms will be supported based upon both intrastate and interstate revenues and, therefore, there is a heightened concern that carriers would recover the portion of their intrastate contributions attributable to intrastate services through increases in rates for basic residential dialtone service, contrary to the affordability principle contained in section 254(b)(1). Therefore, carriers may recover these contributions solely through rates for interstate services, in the same manner that they will recover their contributions to the high cost and low-income support mechanisms, as described above. (FCC Order, ¶ 838)

In the MCI Order, this Commission found that:

[T]he [FCC] Order clearly and unambiguously requires carriers to recover their contributions for the FUSF from rates for interstate services only. After a thorough review of the FCC's Order, we did not find any support for MCI's contention that it has the authority to recover contributions via intrastate rates.

Although the FCC has concluded in its Order that it has the authority to require carriers to seek state approval to recover a portion of their contribution from intrastate revenues, Florida and other states have previously taken the position that the FCC has no such authority. In their brief filed in the 5th Circuit Court of Appeal, State Petitioners argued that the provisions of the FCC's Order which intrude on state authority over intrastate telecommunications should be annulled because there is no grant of such authority to the FCC. Accordingly, we believe that the FCC has no authority to permit MCI to recover its contributions from intrastate revenues, or even to require it to seek approval from the state to do so. (MCI Order pages 3-5)

Staff believes that by including intrastate revenues in the assessment base for contributions to the interstate SLRHC program, the FCC placed IXCs in a difficult position. The FCC Order requires that recovery may occur "solely" through interstate rates. Thus, no matter what proportion of an IXC's revenues come from intrastate services, the IXC may only recover its SLRHC contribution through interstate rates. In an extreme example, an IXC that generates only 10 percent of its total revenues from the interstate jurisdiction would be assessed on all of its revenues, but could only recover the SLRHC assessment from 10 percent of its revenue base. This disadvantages both the IXC and its customers. The IXC is disadvantaged because the only way it can recover its assessment is through breaking the link between cost causer and cost, by charging customers of interstate services an assessment based on intrastate services that those customers may or may not use. This sends improper pricing signals to the marketplace, since the IXCs are not permitted to charge customers the true cost of services. Consumers of interstate services are disadvantaged because the prices are higher than they would otherwise be; while consumers of intrastate services receive incorrect pricing signals.

Staff is sympathetic to AT&T's efforts and appreciative of its attempt to ensure that it is not recovering that portion of its SLRHC assessment based on interstate revenues through a charge on

intrastate rates. Staff also believes that all consumers are better served when costs of programs such as the SLRHC program are explicit, rather than embedded in rates. Nevertheless, in the final analysis AT&T is improperly attempting to recover from the intrastate jurisdiction costs that relate to an interstate program.

Although staff recognizes that the FCC Order may have put IXCs "between a rock and a hard place," staff believes that the FCC Order has unequivocally required that recovery of an IXC's SLRHC contributions be accomplished through interstate rates. Furthermore, staff believes that the FCC has no authority to permit AT&T or any IXC to recover its contributions from intrastate revenues, or to require it to seek approval from a state to do so. Therefore, staff recommends that AT&T's tariff be canceled. The application of the intrastate Universal Connectivity Charge to customer bills is scheduled to begin on July 1, 1998; therefore, if any billing of this charge has begun, it should cease immediately. Any customer who receives a bill that includes the intrastate Universal Connectivity Charge should receive a credit for the amount billed in the next billing cycle.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If the Commission approves Issue 1, and no timely protest is filed, this docket should be closed. If a protest is filed within 21 days of issuance of the order, this docket should remain open and the tariff should remain in effect pending resolution of the protest. In addition, revenues collected pursuant to the tariff should be held subject to refund until final resolution of the protest. (BEDELL)

STAFF ANALYSIS: This docket should be closed if no timely protest is received. If a protest is filed within 21 days of the issuance of the order, however, the docket should remain open to process the protest. In addition, since this tariff went into effect on the day after its May 27, 1998 filing, i.e., on May 28, 1998, pursuant to Rule 25-24.485(2)(b), Florida Administrative Code, the tariff, with billing of the intrastate UCC scheduled to begin July 1, 1998, should remain in effect until the protest is resolved. However, staff believes that it is appropriate to require that the revenues collected under the tariff be held subject to refund until the protest is resolved.