



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: FEBRUARY 4, 1999

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

FROM: DIVISION OF LEGAL SERVICES (BEDELL) MCB/jn CB
 DIVISION OF CONSUMER AFFAIRS (DURBIN)
 DIVISION OF COMMUNICATIONS (BIEGALSKI) CB AW (BWP)

RE: DOCKET NO. 971492-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. AND D/B/A CONNECT 'N SAVE FOR VIOLATION OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER SELECTION

AGENDA: 02/16/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\971492.RCM

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CASE BACKGROUND

On January 1, 1984, the Commission granted AT&T Communications of the Southern States, Inc. and d/b/a Connect 'N Save (AT&T) Certificate Number 69 to provide intrastate interexchange telecommunications service. As a provider of interexchange telecommunications service in Florida, AT&T is subject to the rules and regulations of this Commission.

For the period January 1, 1997, through May 18, 1998, the Commission staff received 183 complaints against AT&T that have been determined to be apparent unauthorized carrier change (slamming) infractions in violation of Rule 25-4.118, Florida Administrative Code. In addition to staff's investigation into these specific slamming complaints, Docket Number 971433-TI was opened to investigate a complaint against AT&T filed by the Office of the Attorney General and the Office of Public Counsel on behalf of Robert Flint for slamming. In Order Number PSC-98-0072-PCO-TI

DOCUMENT NUMBER-DATE

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Docket Number 971433-TI was merged into this docket. The Attorney General and the Office of Public Counsel filed two motions to compel discovery which were held in abeyance pending settlement negotiations. If the Commission approves staff's recommendation, these motions will be moot.

Based on the number of complaints received by Commission staff and the number of apparent slamming violations, the Commission issued Order No. PSC-98-1461-SC-TI, on October 27, 1998, requiring AT&T to show cause why it should not have certificate number 69 canceled or be fined \$5,490,000 for 183 apparent violations of Rule 25-4.118, Florida Administrative Code. On December 21, 1998, AT&T filed an offer of settlement. (Attachment A, Pages 5-7)

Staff's recommendations on AT&T's settlement proposal are set forth below.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by AT&T to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection?

RECOMMENDATION: Yes. (Biegalski)

STAFF ANALYSIS: On December 21, 1998, after several meetings with staff, AT&T submitted an offer to settle. In its settlement offer AT&T agreed to do the following:

- AT&T will accept responsibility for the actions of its agents which result in a slam to a Florida consumer. Specifically, AT&T agrees not to assert as an affirmative defense that it is not responsible for an agent acting outside the scope of its employment with regard to an alleged slam.
- AT&T will discipline employees found to have violated AT&T's Zero Tolerance Policy up to and including termination.
- AT&T will terminate relationships with agents that do not comply with AT&T's Zero Tolerance Policy.

- AT&T will verify 100% of all Letters of Authorization (LOAs) received during the course of its face to face consumer marketing efforts for a period of six months after the date an Order in this docket has been signed.
- AT&T will provide a "warm transfer" of slamming calls from the Commission Consumer Affairs offices directly to the new AT&T Slamming Resolution Centers.
- AT&T will continue deployment of "AT&T Branding/Time At Destination" offering on 1+ calls.
- AT&T will make a settlement proposal of \$500,000. This amount consists of \$300,000 to the general revenue fund of the State of Florida and \$200,000 to be spent by AT&T on Florida-specific consumer education regarding slamming.

In addition, AT&T has verbally agreed to submit a monthly report to staff detailing the expenditure of the \$200,000 and describing the type of consumer education it would undertake. AT&T also agrees to verbally verify the face to face LOAs received over the six month period, and continue the AT&T branding of 1+ calls indefinitely.

Staff supports AT&T's proposal to accept responsibility for its agents and to discipline its employees for actions that violate its Zero Tolerance Policy on slamming. Staff believes this will encourage AT&T to monitor the actions of its agents and employees more closely. Staff also supports AT&T's proposal to verify 100% of LOAs received through face to face marketing. Staff believes this will allow AT&T to better evaluate the information on the LOA to reduce the occurrence of forgery. In addition, staff supports AT&T's proposal to provide a "warm transfer" of slamming calls from the Commission Consumer Affairs offices directly to the new AT&T Slamming Resolution Centers. Staff believes this will allow for expedited resolution of those consumer complaints. Furthermore, staff supports AT&T's proposal to continue deployment of "AT&T Branding/Time At Destination" offering on 1+ calls. Staff believes this will enable consumers to know immediately if an unauthorized change has occurred. Finally, staff supports AT&T's proposal to help educate Florida consumers on the issue of slamming and make them aware of AT&T's new Slamming Resolution Centers. Staff believes this will educate the consumers on the issue of slamming

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and enable the customer to resolve his concerns in an expedited manner.

The company has satisfactorily addressed each of staff's concerns. Therefore, staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, in the amount of \$300,000.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. With the approval of Issue 2, this docket should remain open pending the remittance of the \$300,000 voluntary contribution and the monthly consumer education reports. The reports should be submitted monthly until the funds are expended. Upon remittance of the settlement payment and the last monthly consumer education report, this docket should be closed. The \$300,000 settlement should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. **(Bedell)**

STAFF ANALYSIS: If the Commission approves the staff recommendation in Issue 2, this docket should remain open pending the remittance of the \$300,000 voluntary contribution and the monthly consumer education reports. The reports should be submitted monthly until the funds are expended. Upon remittance of the settlement payment and the last monthly consumer education report, this docket should be closed.



Kenneth P. McNeely
Law & Government Affairs
Vice President - Florida

Suite 700
101 N. Monroe St.
Tallahassee, FL 32301
850 425-6360
FAX: 850 425-6361

December 21, 1998

Via Hand Delivery

Walter G. D'Haeseleer
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

RECEIVED

DEC 21 1998

Jack Shreve
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400

CMU

**Re: *Docket No. 971492-TI Initiation of Show Cause Proceedings
against AT&T Communications of the Southern States, Inc. for
Violation of Rule 25-4.118, F.A.C.***

Gentlemen,

I want to thank both of you for allowing me time to share with you my thoughts on resolving this matter. The progress we have made on this important issue is very positive. I hope that you have concluded from our meetings that AT&T's commitment to address its slamming problem is indeed genuine. I have a meeting scheduled in early January to meet with Attorney General Butterworth on this matter. Though I have not had a meeting yet with Mr. Butterworth, I understand his office shares many of the same concerns as your offices.

The primary concern raised by your offices was that AT&T sought to avoid its responsibility for slamming by asserting AT&T could not be held legally liable for illegal forgeries occasioned by its agents. This asserted affirmative defense is rooted in common law and long upheld by the courts. Indeed, several commissioners have expressed their own reluctance to hold principals liable for the illegal acts of their agent. AT&T raised the defense only to preserve its right to all legally available defenses. Indeed, AT&T has vigorously pursued its agents who

have acted illegally, terminating such relationships and pursuing legal action against them. However, AT&T appreciates the Staff's conclusion that the consumer should not be left without a remedy because the slam was caused by an unscrupulous agent and not the principal itself. Accordingly, for purposes of settlement of this docket, AT&T will agree to accept responsibility for the actions of its agents which result in a slam to a Florida consumer. Understandably, this concession comes at a significant cost to AT&T.

AT&T would further propose the following action in full satisfaction of all alleged slamming claims which were the subject of the above show cause proceedings or which facts occurred prior to the date of this settlement proposal:

1. Discipline employees found to have violated AT&T's Zero Tolerance Policy up to and including termination.

2. Terminate relationships with agents that do not comply with AT&T's Zero Tolerance Policy.

3. Agree to accept responsibility for slamming infractions that may have been occasioned by the acts of an unscrupulous agent. Specifically, AT&T agrees not to assert as an affirmative defense that it is not responsible for an agent acting outside the scope of its employment with regard to an alleged slam.

4. Agree to verify 100% of all Letter of Authorizations ("LOAs") received during the course of its face to face consumer marketing efforts for a period of six months after the date an Order in this docket has been signed.

5. Provide a "warm transfer" of slamming calls to the Commission Consumer Affairs offices directly to the new AT&T Slamming Resolution Centers. These Centers now serve as a dedicated resource to resolve slamming inquires and to collect data to allow AT&T to monitor complaint trends and resolve them in furtherance of AT&T's Zero Tolerance Policy. AT&T has spent over \$100 Million over the last 18 months to make these Centers operational.

6. Continue deployment of "AT&T Branding/Time At Destination" offering on 1+ calls. This service brands 1+ calls with the familiar AT&T "sparkle tone", alerting callers that AT&T is the carrier for the call. Consumers who have not presubscribed to AT&T will know immediately that an unauthorized switch has occurred and those presubscribed to AT&T who do not hear the tone will know that they have been switched away from AT&T.

7. Offer the sum of \$500,000 in settlement. This amount will consist of a \$300,000 voluntary payment to the State of Florida general treasury fund and \$200,000 to be spent by AT&T on Florida-specific consumer education regarding slamming. The slamming education campaign will include print media to educate

Florida consumers on slamming prevention and alert them of AT&T's new Slamming Resolution Centers.

I hope that you will consider this offer favorably at your earliest convenience. As you are aware, AT&T's counsel filed a Preliminary Response to Order to Show Cause, Motion for Extension of Time and Petition for Formal Administrative Hearing on November 16, 1998. I understand that Staff is prepared to recommend a ruling on that Petition. I truly hope that this settlement proposal is satisfactory to both your offices. It clearly demonstrates AT&T's willingness to accept responsibility and to take a leadership role in slamming prevention. I am confident other carriers will follow suit. In any event, to avoid undue procedural delay, I would appreciate it if you would act on AT&T's Response filed on November 16th and recommend transfer of the case to the Division of Administrative Hearing.

I look forward to hearing from you on this matter.

Best regards,

Very truly yours,


Kenneth P. McNeely