



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: APRIL 19, 2001

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

FROM: DIVISION OF COMPETITIVE SERVICES (BUYS) *DB*
 DIVISION OF REGULATORY OVERSIGHT (VANDIVER) *AV*
 DIVISION OF LEGAL SERVICES (FUDGE) *mf*

RE: DOCKET NO. 010364-TI - INVESTIGATION AND DETERMINATION OF APPROPRIATE METHOD FOR REFUNDING NON-SUBSCRIBER SURCHARGE, PLUS INTEREST, APPLIED TO INTRASTATE 0+ CALLS MADE FROM PAY TELEPHONES BY AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. D/B/A CONNECT 'N SAVE AND D/B/A LUCKY DOG PHONE CO. AND D/B/A ACC BUSINESS.

AGENDA: 05/01/01 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: PLACE THIS DOCKET ON THE AGENDA ITEM LIST IMMEDIATELY PRECEDING DOCKET NO. 992037-TI.

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010364.RCM

CASE BACKGROUND

- February 1, 1999 - Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements, was amended to cap rates for intrastate 0+ and 0- calls made from pay telephones or in a call aggregator context to \$.30 per minute plus \$3.25 for a person-to-person call and \$1.75 for a non person-to-person call.
- February 26, 1999 - AT&T Communications of the Southern States, Inc. (AT&T) implemented a non-subscriber surcharge of \$2.50 that was applied to certain intrastate 0+ calls made from payphones that terminated to an end user who was not presubscribed to AT&T.

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PSC-RECORDS REPORTING

- August 19, 1999 - Staff sent a certified letter to AT&T informing the company that a review of its tariffs indicated that AT&T may have overcharged end users for intrastate 0+ or 0- calls made from pay telephones from the time rate caps became effective and requested that AT&T investigate the situation and provide staff with written responses to specific questions pertaining to any overcharges.
- December 30, 1999 - Staff opened Docket No. 992037-TI to investigate and determine the appropriate method for refunding the apparent overcharges.
- March 2, 2000 - AT&T provided a written response to staff's certified letter in which AT&T stated that there are two surcharges that may be charged in connection with certain operator-handled calls; a non-subscriber surcharge (NSSC) and a payphone surcharge. AT&T stated that it would remove the NSSC from its tariff. AT&T estimated that the amount of the NSSC overcharges billed to end users during a 13 month period was \$65.00. (Attachment A)
- March 7, 2000 - Staff initiated an audit to determine the amount of the NSSC that may have been billed to end users and subsequently requested billing data tapes from AT&T.
- November 13, 2000 - The audit staff received a workable version of the billing data tapes that were used to generate a sample of calls from which staff requested the billing records to determine if the NSSC was billed to the end users.
- February 5, 2001 - The audit staff completed its report.
- March 14, 2001 - AT&T submitted a proposed resolution for charging end users a \$2.50 NSSC in excess of the rate caps established in Rule 25-24.630, Florida Administrative Code. (Attachment B, Redacted Version)
- March 27, 2001 - Staff opened Docket No. 010364-TI to specifically address the NSSC overcharge issue.

The Commission is vested with jurisdiction over this matter pursuant to Section 364.3376, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept AT&T's offer to contribute \$50,000 to the General Revenue Fund as a resolution for charging end users for a non-subscriber surcharge on 0+ intrastate calls made from a payphone or in a call aggregator context in excess of the rate caps listed in Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements?

RECOMMENDATION: Yes. The Commission should accept AT&T's offer to contribute \$50,000 to the General Revenue Fund as a resolution for charging end users a non-subscriber surcharge on 0+ intrastate calls made from a payphone or in a call aggregator context in excess of the rate caps listed in Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements. Any contribution should be received by the Commission within 30 days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund. **(BUYS)**

STAFF ANALYSIS: Staff compared AT&T's tariff for operator service rates and charges to the rate caps established in Rule 25-24.630, Florida Administrative Code. Based on the comparison, AT&T's tariffed rates appeared to exceed the rate cap. Specifically, AT&T added a \$2.50 NSSC to intrastate 0+ calls billed to residential lines that were presubscribed to an interexchange carrier other than AT&T. The addition of the NSSC is not authorized under the rate cap listed in Rule 25-24.630(1), Florida Administrative Code, which states:

Services charged and billed to any end user by an operator services provider for an intrastate 0+ or 0-call made from a pay telephone or in a call aggregator context shall not exceed a rate of \$.30 per minute plus the applicable charges for the following types of telephone calls:

- (a) A person-to-person call -- a charge of \$3.25;
- (b) A call that is not a person-to-person call -- a charge of \$1.75.

On March 7, 2000, staff initiated an audit of AT&T's billing data in an attempt to determine the magnitude of the NSSC overcharges. AT&T provided staff with billing data tapes for the four-week period of January 31, 2000, through February 27, 2000. The audit staff determined that the confidential billing data included a number of intrastate calls that contained the billing

determinants, as specified by AT&T, that would trigger the addition of the NSSC to an end users bill. However, the audit staff was unable to determine the end user's interexchange carrier designation for those calls. Consequently, the number of end users who were actually billed for the surcharge could not be determined. Due to this missing information, staff was unable to determine the actual amount that was overcharged during that period.

In an effort to verify if the NSSC was actually billed, the audit staff requested copies of customers' bills for a small number of the calls that should have included the NSSC. From the information on the bills, the audit staff verified that three of the bills included the NSSC. Conversely, the audit staff found several bills that did not include the NSSC. Moreover, none of the bills from BellSouth that staff reviewed contained the NSSC. This analysis indicated that the NSSC was billed to end users, but on an inconsistent basis.

AT&T's first estimate of the overcharge for the NSSC prior to the audit was \$65.00. The audit report suggests that this estimate is unreasonable and the amount of the overcharges is most likely considerably higher. After reviewing the audit report, AT&T submitted its proposal to resolve the apparent overcharges billed to end users due to the application of the NSSC. In its settlement proposal, AT&T offered the following:

- To contribute \$50,000 to the General Revenue Fund of the State of Florida within 30 days of the Commission order approving its proposal and becoming a final order.
- As of February 29, 2000, AT&T voluntarily ceased charging the NSSC.

In its proposal, AT&T also recognized that the Commission's preferred method of returning overcharges to the end users is through a refund mechanism. However, AT&T stated that, "in this particular situation, such a refund is impractical, excessively burdensome, and prohibitively expensive." AT&T indicated that it has not been possible to identify the customers or the calls that have been subjected to the NSSC and additional efforts to do so may take an additional six to twelve months and still not successfully identify the potentially affected customers. AT&T further indicated that if the customers could be identified, refunding the overcharges would require special processes to identify and credit the customers which would cost more than the actual refund.

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Based on the foregoing, staff recommends that the Commission should accept AT&T's offer to contribute \$50,000 to the General Revenue Fund as a resolution for overcharging end users for 0+ intrastate calls made from a payphone or in a call aggregator context in excess of the rate caps listed in Rule 25-24.630, Florida Administrative Code. Any contribution should be received by the Commission within 30 business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If no person, whose interests are substantially affected by the proposed agency action files a protest of the Commission's decision on Issue 1 within the 21 day protest period, the Commission's Order will become final upon issuance of a consummating order. This docket should, however, remain open pending the receipt of the \$50,000 contribution. Upon receipt of the \$50,000 contribution, it should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund, and this docket may be closed administratively. **(Fudge)**

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, the Commission's Order will become final upon issuance of a consummating order. This docket, however, should remain open pending the receipt of the \$50,000 contribution. Upon receipt of the \$50,000 contribution, it should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund, and this docket may be closed administratively.



Rhonda P. Merritt
Law & Government Affairs
Assistant Vice President - Florida

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March 2, 2000

Ms. Kelly Biegalski
Division of Communications
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Docket 992037

Dear Ms. Biegalski:

Thank you for the opportunity to respond to Staff's questions about AT&T's rates for operator services. The purpose of this letter is to discuss two rates that may be charged in connection with certain operator-handled calls: a non-subscriber surcharge and a payphone surcharge.

After numerous discussions with Staff on the applicability of the operator services rate cap (Rule 25-24.630), AT&T will modify its tariff to remove the non-subscriber surcharge. We do not agree that this surcharge is in violation of the existing rate cap. However, the number of occasions where this surcharge is applied is extremely low and does not warrant prolonged discussion or litigation.

Based on our analysis of billing data, we estimate that the \$2.50 non-subscriber surcharge was billed an average of once every two to three weeks for calls from payphone or call aggregators. Using the average of twice per month, the amount which is alleged to have been overcharged is approximately \$65.00 (two charges per month @ \$2.50/ea. x 13 months).

The non-subscriber surcharge, by its nature, is billed by the appropriate local exchange carrier. The customers who incur this charge are not AT&T presubscribed customers, so it is difficult if not impossible for AT&T to know for certain which non-AT&T customers incurred the charge. Because of the small amount of money involved and the difficulty of locating the persons who incurred the charges, AT&T agrees to make a refund of the amount in question directly to the Florida general revenue fund as settlement of this matter.


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Regarding the payphone surcharge, AT&T again does not agree that this charge is covered by the existing operator service rate cap. AT&T is aware that there has been confusion on the applicability of Florida intrastate rate caps to federally-approved charges, including the payphone surcharge. In fact, Staff has recently opened a docket to clarify the rule on this point, in addition to other proposed rule changes (Docket 991930).

AT&T charges this rate in good faith, and in reliance on the FCC's approval. At no time in the prior rulemaking proceeding did AT&T understand that the rate cap was intended to limit charges approved by another jurisdiction. Therefore, because of this existing debate, AT&T requests that Staff recommendation on this item be deferred to a subsequent docket, if applicable, after the outcome of Docket 991930 is final. This will allow an efficient use of both your resources and ours and avoid arguing the same issue in two separate dockets.

We appreciate the opportunity you have given us to work with you on resolution of these two issues.

Sincerely,



Rhonda P. Merritt



Rhonda P. Merritt
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Assistant Vice President - Florida

March 14, 2001

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REDACTED VERSION

Mr. Ray Kennedy
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Docket No. 992037-TI, Investigation of Operator Service Provider Surcharges;
AT&T Proposed Resolution

Dear Mr. Kennedy:

The purpose of this letter is to convey AT&T's proposed resolution of this docket. As you know, on December 30, 1999, the Commission Staff initiated this docket to investigate AT&T's application of its nonsubscriber service charge ("NSSC") and whether this charge violated the operator service rate caps. AT&T believes that the NSSC did not violate the Commission's rate caps, but the company nevertheless withdrew the approved tariff. In an effort to resolve the remaining questions pertaining to the revenues associated with this tariff rate, AT&T offers this proposed resolution and supporting information.

The NSSC became effective in AT&T's intrastate Florida tariff on February 26, 1999. As specified in the tariff, the \$2.50 NSSC was applied to Dial Station, Operator Station, Person-to-Person or Real Time Rated calls that were billed to residential lines that were not presubscribed to AT&T or were not presubscribed to any interexchange carrier. The purpose of the NSSC was to attempt to recover some of the extra costs of billing and collection that were associated with long distance telephone calls where there was no preexisting billing relationship with AT&T. The NSSC was billed by the appropriate local exchange company, usually the ILECs, to customers who were not presubscribed to AT&T. While AT&T disagreed with the Commission Staff position that this charge violated the operator services rate caps specified in Rule 25-24.630, AT&T nevertheless voluntarily quit charging the NSSC effective February 29, 2000.

AT&T and the Commission Staff have continued to meet, correspond, and discuss the application of this charge and the amount of revenue collected by AT&T since the time that the tariff was withdrawn. AT&T believes that it has at all times attempted to work with the Staff in good faith to resolve the Staff's concerns. However, the NSSC is not actually assessed or billed by AT&T, so AT&T's records do not reflect the amount of revenue it received in connection with this charge. Rather, AT&T sends usage information to its billing agents, the ILECs, along with different billing rating mechanisms depending upon whether the customer is presubscribed to AT&T. Using the presubscribed information in the ILEC database, the ILEC then bills the customer based upon the correct billing requirements. Thus, looking exclusively at the AT&T database does not answer the question, nor can we identify the customers that may have been charged the NSSC by examining just the ILEC database.

Further complicating this analysis is the fact that the NSSC was not to be applied in every instance in which the customer was not presubscribed to AT&T. For example, excluded from the charge were intraLATA, directory assistance, 1-800-CALLATT, and other calls. Finally, even when billed, not all of the revenue was collected since there is a significant amount of uncollectables in the pay telephone service market, particularly when the billed party is not an AT&T subscriber.

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To further understand how much might have been billed, on March 7, 2000, the Commission Staff initiated a formal audit. While AT&T responded timely to the Staff requests for data, numerous technical problems delayed the actual start of the audit. AT&T compiled, copied, and forwarded to the Staff auditors numerous billing tapes over a seven month period for the Staff to analyze. In addition, AT&T and Staff talked with the three large Florida ILECs, BellSouth, GTE, and Sprint, to determine their ability to provide billed information to assist in the Staff audit and to assist in any refund that might eventually be undertaken.

Based upon the available billing tapes for a four week period, the Staff audit randomly chose 114 messages from 54 accounts. The end user customer billing records corresponding to these calls were obtained from BellSouth, GTE, and Sprint. Of the 114 messages, 52 messages were for accounts that were presubscribed to AT&T, so these were not subject to the charge. With respect to the remaining 62 messages, the Staff audit found that only 3 calls were actually charged the nonsubscriber charge—all billed by carriers other than BellSouth. Moreover, none of the calls in the sample that were billed by BellSouth were subjected to the charge.

On February 7, 2001, the Staff issued its audit report. At Audit Exception No. 1, the Staff found that of the [REDACTED] calls in the sample period, only [REDACTED] contained the billing determinants which could trigger the NSSC. However, the audit reports that the Staff was unable to determine how many of the [REDACTED] calls were billed to lines presubscribed to AT&T since the billing tapes do not contain that information.

AT&T agrees with the audit report statement that "no statistical inference can be derived from the audit staff's customer selection process." However, several valid conclusions can be drawn from the audit and some reasonable inferences can be made. First, not every pay telephone-originated call received the NSSC. Second, not every call that was eligible under the tariff to be billed the NSSC was in fact billed the charge. Third, if BellSouth did not at any time bill the NSSC as is suggested by the sample, and which is indicated in correspondence from BellSouth to the Commission Staff, then that would eliminate approximately 65% of the access lines in this state from possible application of the NSSC. Fourth, if the 3 calls found in the audit that were billed the NSSC (roughly 5%) were to be consistent with the results of a wider sampling, then less than 5% of the eligible calls would have received the NSSC. Fifth, the period audited, January 31, 2000, through February 27, 2000, would have included one of the peak calling days in the year, with the overall February calling volumes being fairly typical for the network. Sixth, data from the Florida PSC's published report entitled "Statistics of Florida Telecommunications Companies" suggests that approximately 70% of the lines remain presubscribed to AT&T so the NSSC would not be applied to calls to these customers. Finally, there is nothing to suggest that if a more detailed audit were done that the results would be materially different from those presented in this audit.

Using the numbers in the audit as a starting point and the assumption that 70% of the lines are presubscribed to AT&T, then only 5% of the remaining 30% of the lines would have been impacted by the NSSC. Rounding up, this means that [REDACTED] messages times 30%, would leave [REDACTED] messages eligible for the NSSC each month. Multiplying the [REDACTED] potential messages by the 5% factor results in [REDACTED] messages a month that would have received the NSSC. These [REDACTED] messages represent [REDACTED] in potential revenue a month, or [REDACTED] in potential revenue for the entire 13 month period that the NSSC tariff was in effect. If you reduce this figure by 5% for bad debt, recourse, and uncollectables (5% being a fairly low number for these), leaves [REDACTED] in potential revenue to be collected by AT&T. Assuming a refund to customers with interest, there would be less than \$5,000 in additional interest due, making a potential refund of approximately \$30,000. Of course, this assumes that none of the calls were billed to BellSouth customers, which is highly unlikely since BellSouth serves approximately 58% of the total customers in Florida.

AT&T recognizes that this approach is not as satisfactory as analyzing every call from the affected period. To undertake a complete accounting would involve reviewing over 300 million phone call records of AT&T and obtaining between 500,000 and 1 million phone records from the ILECs. Assuming all of those records could at

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this point be compiled, and much of this investigation would have to be manual at this point since the calls at issue are now all over one year old, such an investigation would be extremely time consuming and costly.

The sample undertaken in the Staff audit may be limited, but it does provide a sufficient basis to enable AT&T to propose a means of concluding this matter. In consideration of all of these facts and issues, AT&T is prepared to settle this matter by paying \$50,000 to the General Revenue fund of the State of Florida as directed by the Commission. AT&T would make this payment within 30 days of the order approving this proposal becoming a final order under Florida law.

AT&T believes that this amount, nearly double what the audit numbers would suggest, should more than account for any variance in the audit data as well as the application of interest. As we have said throughout this investigation, AT&T believes that the rate caps do not apply to a charge such as this. However, given the low levels of revenue derived from the charge, AT&T withdrew its tariff and stopped the charge. It would be inappropriate to seek to recover from AT&T more than the revenue actually suggested by the available information.

In making this proposal, AT&T recognizes that the Commission's preferred method of returning revenues to customers is by a direct refund to the customers that are affected. In this particular situation, such a refund is impractical, excessively burdensome, and prohibitively expensive. Given the nature of this issue, it has not been possible to identify the customers or the calls that have been subjected to the NSSC; to do so might involve another 6 to 12 months and still not successfully identify the potential customer base. Assuming the customers could be identified, they must be refunded back through the applicable local exchange company that billed them in the first place. Such ILEC billing would require special processes to identify and credit the customers that one ILEC estimated could be between \$140,000 and \$220,000 depending upon the approach used. Moreover, given the fact that some of these calls are as far back as two years ago, actually finding each person becomes more problematic each day, which means that notwithstanding the herculean effort that would be required, probably upwards of 50% of the money may not be returnable to the affected customers. Finally, given the low total amount of the proposed refund, only \$50,000, it simply would not be cost effective to spend what could be 10 times as much to actually effectuate any refund to end user customers. Therefore, AT&T believes that the most appropriate means of resolving this matter quickly and without any further delay would be by a direct payment to the General Revenue fund as directed by the Commission.

AT&T makes this offer solely in connection with its effort to settle and resolve this investigation, and it may not be used for any other purpose. AT&T does not admit to any wrongdoing, and submission of this proposal and its acceptance by the Commission shall not be construed as any admission of liability on the part of AT&T or any of its agents, employees, or officers, or affiliates. AT&T fully reserves all of its rights, positions, and arguments if this proposal is not accepted and approved by the Commission and incorporated into a final order in accordance with its terms.

This proposal shall be valid and binding upon AT&T only to the extent it is adopted in its entirety as presented to the Commission. If this proposal is accepted by the Commission, then AT&T shall not request reconsideration or appeal of the order of the Commission approving this proposal in accordance with its terms.

If you wish to further discuss this matter or require any additional information, please let me know.

Sincerely,

Rhonda Merritt
Rhonda Merritt