

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 010364-TI
ORDER NO. PSC-01-1081-PAA-TI
ISSUED: May 7, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
J. TERRY DEASON
LILA A. JABER
BRAULIO L. BAEZ
MICHAEL A. PALECKI

NOTICE OF PROPOSED AGENCY ACTION
ORDER ACCEPTING SETTLEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

On February 1, 1999, Rule 25-24.630, Florida Administrative Code, 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.

DOCUMENT NUMBER-DATE

05722 MAY-70

FPSC-RECORDS/REPORTING

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On 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.

On August 19, 1999, AT&T was informed 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. AT&T was requested to investigate the situation and provide written responses to specific questions pertaining to any overcharges.

Docket No. 992037-TI was opened on December 30, 1999, to investigate and determine the appropriate method for refunding the apparent overcharges.

On March 2, 2000, AT&T provided a written response to our inquiries 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)

On March 7, 2000, an audit was initiated to determine the amount of the NSSC that may have been billed to end users and subsequently requested billing data tapes from AT&T.

On November 13, 2000, the auditors 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. The audit report was completed on February 5, 2001.

On 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)

Docket No. 010364-TI was opened on March 27, 2001, to specifically address the NSSC overcharge issue.

This Commission is vested with jurisdiction over this matter pursuant to Section 364.3376, Florida Statutes.

RATE CAP

We 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 tarified 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, our staff initiated an audit of AT&T's billing data in an attempt to determine the magnitude of the NSSC overcharges. AT&T provided billing data tapes for the four-week period of January 31, 2000, through February 27, 2000. The auditors 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 auditors were 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, we were unable to determine the actual amount that was overcharged during that period.

In an effort to verify if the NSSC was actually billed, the auditors 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 auditors verified that three of the bills

included the NSSC. Conversely, the auditors found several bills that did not include the NSSC. Moreover, none of the bills from BellSouth that we 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 our 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.

Based on the foregoing, we hereby 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 shall be received within 30 business days from the issuance date of this Order and shall identify the docket number and company name. Upon receipt of the \$50,000 contribution, it shall be forwarded to

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the Office of the Comptroller for deposit in the State General Revenue Fund, and this docket shall be closed administratively.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that AT&T Communications of the Southern States, Inc.'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 is accepted. It is further

ORDERED that any contribution shall be received within 30 business days from the issuance date of this Order and shall identify the docket number and company name. It is further

By ORDER of the Florida Public Service Commission this 7th Day of May, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

JKF

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, 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 May 28, 2001.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.