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January 15, 1997

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Mrs. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

970075-TI

Dear Mrs. Bayo:

Enclosed for filing is an original and fifteen (15) copies  
of AT&T's Petition for Partial Waiver of Rule 25-4.113(4),  
Florida Administrative Code.

Yours truly,

*Marsha E. Rule*  
Marsha E. Rule

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for partial waiver of Rule 25-4.113 (4) )  
Florida Administrative Code )

Docket No. **970075-TI**

Filed: 1/15/97

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**AT&T's PETITION FOR PARTIAL WAIVER  
OF RULE 25-4.113(4),  
FLORIDA ADMINISTRATIVE CODE,**

AT&T Communications of the Southern States, Inc., ("AT&T") hereby petitions the Florida Public Service Commission ("Commission"), pursuant to Rule 25-22.036, Florida Administrative Code, and Section 364.01(4) (b), (c) and (f), Florida Statutes (1995), for a partial waiver of Rule 25-4.113 (4), Florida Administrative Code. In support, AT&T states as follows:

1. AT&T currently provides direct billing to many of its customers. These customers receive a monthly billing statement for local telephone service from their local exchange provider and another, separate statement from AT&T for their long distance service. If such customers have a wireless telephone or pager, they also receive a third separate statement from their wireless service provider. In some cases, the wireless service provider is AT&T Wireless Services ("AT&T Wireless").

2. As a competitive offering, AT&T wishes to provide a simplified billing option for its long distance customers who also subscribe to service from AT&T Wireless. In order to provide this option, AT&T would bill and collect wireless service

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charges on behalf of AT&T Wireless. Customers who elect the combined billing option would receive one monthly statement which would include separately itemized landline long distance and wireless charges. These subtotals would be combined into a single balance, which customers would pay with a single check, thereby eliminating the necessity of paying two separate bills. Combined billing would be provided for the convenience of customers, at no extra charge. Customers who elect combined billing would be able to return to separate billing if they so desire.

3. Customer payments would be applied to the total balance on the combined statement. As with separate billing, failure to pay could result in disconnection of landline long distance and wireless services. Partial payment, however, also could result in disconnection of both services, even if the amount of the partial payment otherwise would be sufficient to cover either the landline or wireless charges. In other words, once combined at the customer's request, landline and wireless charges would be treated as a single balance that must be paid in full or the account would be considered delinquent by both providers.

4. Rule 25-4.113, Florida Administrative Code, specifies conditions under which local exchange companies may and may not discontinue service to their customers. Because this rule is applied to interexchange companies by Rule 25-24.490, Florida Administrative Code, which expressly incorporates Rule 25-4.113, it arguably controls IXCs' ability to discontinue service to their customers. Rule 25-4.113(4)(e) provides as follows:

(4) The following shall not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer:

• • • •

(c) Failure to pay for a service rendered by the company which is not regulated by the Commission.

To the extent necessary, AT&T seeks a waiver of Section 25-4.113(4)(c), Florida Administrative Code, to allow disconnection for failure to pay the combined landline and wireless balance.

### Discussion

5. Rule 25-4.113, F.A.C., Refusal or Discontinuance of Service by Company, controls the circumstances under which LECs may refuse or discontinue service to their customers. Rule 25-24.490, F.A.C., incorporates this rule and thereby applies it to IXC's. The statutory authority for Rule 25-4.113 is as follows:

- Sec. 364.03 Rates to be reasonable; performance of service; maintenance of telecommunications facilities
- Sec. 364.19 Telecommunications service contracts; regulation by commission
- Sec. 427.704 Powers and duties of the commission (relates to implementation and oversight of telecommunications relay system)

Sec. 364.19 relates to the Commission's authority over service contracts such as Contract Service Arrangements, while Sec. 407.704 provides authority for the Commission's regulation of the Telecommunications Relay System. Therefore, the rule must rely upon the authority granted to the Commission in Sec. 364.03 as the source of general service regulatory authority for Rule 25-4.113. This statute, however, no longer applies to ALEC's, IXC's or price-regulated LEC's.

6. According to Sec. 364.337(2) and (4), Sec. 364.03 does not apply to ALEC's or IXC's. Similarly, under Sec. 364.051(5)(c), Sec. 364.03 no longer applies to

price-regulated LECs. Since Rule 25-4.113 relies on the authority of Sec. 364.03, the application of this rule to ALECs, IXC's or price-regulated LEC's would constitute an invalid exercise of delegated legislative authority under Sec. 120.52(8), Florida Statutes. The Commission recently recognized this problem and accordingly, voted to withdraw an amendment to Rule 25-4.113 that had been promulgated based on this authority. See Docket No. 951123-TP (Proposed amendment of Rule 25-4.113, F.A.C., Refusal or Discontinuance of Service by Company.)

7. Given the lack of statutory authority for enforcement of Rule 25-4.113, F.A.C., as to ALECs, IXC's and price-regulated LEC's, a waiver of the rule is not strictly necessary. In an abundance of caution, however, AT&T prefers to seek an explicit waiver of the requirement. Section 120.542, Florida Statutes (1996), requires the Commission to grant a waiver whenever the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means and when application of a rule would create a substantial hardship or would violate principles of fairness. These requirements are met in the present context: the underlying statute no longer applies to AT&T and it would violate principles of fairness to require continued adherence to a rule that is beyond the Commission's authority.

8. Further, granting the waiver is consistent with both the letter and spirit of Florida's competitively-oriented telecommunications statutes. For example, Section 364.01(1)(b), Florida Statutes (1995), directs the Commission to encourage telecommunications competition through flexible regulatory treatment to ensure a wide range of customer choice, while Sections 364.01(1)(c) and (f) instruct the Commission to

encourage new telecommunications services while eliminating rules that are either unnecessary or will impair the transition to competition. Granting the waiver is in the public interest because it will allow AT&T to compete more effectively in Florida's highly competitive long distance market by allowing it to offer service bundles at customer request, thus increasing customer convenience.

WHEREFORE AT&T respectfully requests that the Commission grant it a waiver from Rule 25-4.113(e), Florida Administrative Code, in order to allow it to offer combined billing service to its customers upon request.

Respectfully Submitted



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