

Bane *MAB*
McLean *[Signature]*

State of Florida



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

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DATE: JULY 11, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYO)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS, DRB, AF)
FONDO) *AF*
DIVISION OF CONSUMER AFFAIRS (DURBIN, MCHARGUE) *DD M. SW*
OFFICE OF THE GENERAL COUNSEL (CHRISTENSEN, DODSON) *pac*

RE: DOCKET NO. 010409-TP - PETITION BY CITIZENS OF STATE OF FLORIDA FOR INVESTIGATION OF TALK AMERICA INC. AND ITS AFFILIATE, THE OTHER PHONE COMPANY, INC. D/B/A ACCESS ONE COMMUNICATIONS, FOR WILLFUL VIOLATION OF RULE 25-4.118, F.A.C.

DOCKET NO. 010564-TX - INVESTIGATION OF POSSIBLE VIOLATION OF COMMISSION RULES 25-4.118 AND 25-24.110, F.A.C., OR CHAPTER 364, F.S., BY THE OTHER PHONE COMPANY, INC. D/B/A ACCESS ONE COMMUNICATIONS, HOLDER OF ALEC CERTIFICATE NO. 4099, AND TALK AMERICA INC., HOLDER OF ALEC CERTIFICATE NO. 4692.

AGENDA: 07/23/02 - REGULAR AGENDA - ISSUE 1 - ALTERNATIVE - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010409-2.RCM

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CASE BACKGROUND

Talk America¹ obtained Florida Public Service Commission Interexchange Company (IXC) telecommunications certificate No. 2985 on July 29, 1992, Alternative Local Exchange Company (ALEC) certificate No. 4692 on August 29, 1996, and obtained IXC certificate No. 4100 and ALEC certificate No. 4099 through the transfer of ownership and control from The Other Phone Company, Inc. d/b/a Access One Communications on August 3, 2000.

- April 6, 2001 - The Office of the Public Counsel (OPC) filed a petition on behalf of the Citizens of the State of Florida for investigation of Talk America (IXC certificate Nos. 2985 and 4100) for willful violation of Rule 25-4.118, Florida Administrative Code. Docket No. 010409-TP was opened in conjunction with the OPC's petition.
- April 20, 2001 - Staff opened Docket No. 010564-TX to investigate possible violations of Rule 25-4.118, Florida Administrative Code, and Chapter 364, Florida Statutes, by Talk America (ALEC certificate Nos. 4692 and 4099).
- June 21, 2001 - The Commission issued Order No. PSC-01-1361-PCO-TX, in this docket, granting a motion filed by Talk America to consolidate Docket Nos. 010564-TX and 010409-TP. Hence, all the apparent violations against Talk America's four certificated entities were combined into one proceeding.
- October 23, 2001 - The Commission issued Order No. PSC-01-2107-SC-TP, ordering Talk America to show cause in writing within 21 days why it should not be fined \$10,000 per apparent violation, totaling \$6,570,000, for 522 apparent violations of Rule 25-4.118, Florida Administrative Code, Toll, Local Toll, or Toll Provider Selection, 105 apparent violations of Section 364.604(2), Florida Statutes, Billing Practices, and 30 apparent violations of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints.

¹In the interest of simplification, Talk.com Holding Corp. d/b/a Network Services d/b/a The Phone Company (now known as Talk America, Inc.) and its affiliate, The Other Phone Company d/b/a Access One Communications, will be collectively referred to as "Talk America" throughout this recommendation.

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- November 6, 2001 - Talk America filed a request for a hearing, and by Order No. PSC-02-0095-PCO-TP, issued January 16, 2002, the Commission granted Talk America's request for an extension of time to file a response to the Show Cause Order.
- March 19, 2002 - Talk America filed its initial response and renewed its request for a hearing. Talk America also filed its Motion for Summary Final Order and Motion to Dismiss.
- June 11, 2002 - Talk America filed its settlement offer (Attachment A) to resolve the 657 apparent violations cited in the Commission's Show Cause Order.

Talk America's intrastate revenue for its four certificated entities as reported on its 2001 Regulatory Assessment Fee forms for the period January 1, 2001, through December 31, 2001, totaled \$8,295,634.39.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.01, 364.19, 364.183, 364.285, 364.337, 364.603, and 364.604, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept Talk America's settlement offer to make a voluntary payment of \$240,000, in 36 equal monthly installments, to the State of Florida General Revenue Fund to resolve 522 apparent violations of Rule 25-4.118, Florida Administrative Code, Toll, Local Toll, or Toll Provider Selection, 105 apparent violations of Section 364.604(2), Florida Statutes, Billing Practices, and 30 apparent violations of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints?

PRIMARY RECOMMENDATION: No. The Commission should not accept Talk America's settlement offer to make a voluntary payment of \$240,000 to the State of Florida General Revenue Fund to resolve 522 apparent violations of Rule 25-4.118, Florida Administrative Code, Toll, Local Toll, or Toll Provider Selection, 105 apparent violations of Section 364.604(2), Florida Statutes, Billing Practices, and 30 apparent violations of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints, and consequently, this matter should proceed to a hearing. **(Buys, Christensen)**

ALTERNATIVE RECOMMENDATION: Yes. The Commission should accept Talk America's settlement offer to make a voluntary payment of \$240,000 to the State of Florida General Revenue Fund. The payment should be made in 36 equal monthly intervals in the amount of \$6,666.67 each. The first payment should be received within 30 calendar days from the issuance date of the Commission's Consummating Order and should identify the docket number and company name. Each subsequent payment should be due within 30-day intervals following the first payment and should also identify the docket number and company name. The Commission should forward the payments to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. In addition, if staff's alternative recommendation is approved, then all pending motions would be rendered moot. **(Dodson, Fondo)**

PRIMARY STAFF ANALYSIS: In its settlement proposal, dated June 11, 2002, Talk America offers to pay \$240,000, in 36 equal monthly installments, to the State of Florida General Revenue Fund to resolve 657 apparent violations. This amount equates to \$365 per apparent violation. The payment amount offered by Talk America is not consistent with previous settlement offers the Commission has accepted from other companies for similar apparent slamming violations. Since 1997, in 21 dockets, the average settlement amount per apparent slamming violation is \$2,068. The lowest

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settlement amount per apparent violation was \$363 and the highest was \$5,263. Table 1 summarizes the settlement amounts in those 21 dockets.

Table 1

Docket Number	Company Name	Number of Apparent Slamming Violations	Settlement Amount	Amount per slam
970312	Long Distance Services	12	\$6,000	\$500
970420	Business Discount Plan	76	\$25,000	\$609
971482	Minimum Rate Pricing	50	\$100,000	\$2,000
971483	Unidial	64	\$125,000	\$1,953
971484	Sprint	106	\$150,000	\$1,415
971485	Preferred Carrier Services	53	\$50,000	\$943
971487	LCI International	71	\$110,000	\$1,549
971488	Intercontinental Long Distance	24	\$50,000	\$2,083
971489	Home Owners Long Distance	101	\$90,000	\$891
971490	Excel	38	\$68,000	\$1,789
971492	AT&T	183	\$500,000	\$2,732
971527	Supra Telecommunications	63	\$45,000	\$692
980897	Least Cost Routing	68	\$70,000	\$1,029
980950	Corporate Services Telecom	55	\$20,000	\$363
981247	American Nortel Communications	16	\$30,000	\$1,875
981643	USA Telecorp	15	\$12,000	\$800
981867	The Other Phone Company	14	\$7,500	\$534
981869	Value Tel, Inc.	1	\$500	\$500
990362	Verizon Select Services, Inc.	209	\$1,100,000	\$5,263
000778	Qwest Communications Corporation	18	\$18,000	\$1,000
010245	OLS	34	\$51,000	\$1,500
TOTAL		1,271	\$2,628,000	\$2,068

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In the Commission's show cause order, Order No. PSC-01-2107-SC-TP, issued October 23, 2001, 414 of the 657 complaints that are considered to be apparent violations were originally closed as apparent non-violations by the Division of Consumer Affairs (CAF). Talk America asserts that since CAF initially determined that the 414 complaints in question are not apparent rule violations, the Commission should not consider them for the purposes of imposing penalties. The Division of Competitive Markets & Enforcement (staff) believes that CAF's initial determination as to whether a complaint against Talk America appears to be or does not appear to be a violation is not binding on the Commission and only the Commission has the authority to determine if Talk America violated its rules or Florida Statutes.

Previous dockets involving slamming violations typically only include complaints that were closed by CAF as apparent violations. However, in this case, staff reviewed all the complaints filed against Talk America in its investigation because of (1) the sudden increase in the number of complaints received, (2) the broad scope of the type of complaints received, and (3) to address the OPC's petition to investigate Talk America for willful violation of Rule 25-4.118, Florida Administrative Code. Staff's intent was to determine the extent and nature of the problems Florida consumers were experiencing with Talk America's service and business practices. After a thorough review of over 1,000 complaints filed against Talk America, staff concluded that there were 657 apparent violations of the Commission's rules and Florida Statutes and filed its recommendation accordingly.

Staff contends that Talk America was aware of the possibility that complaints originally closed by CAF as apparent non-violations might be considered as apparent violations once staff completed its analysis. On May 8, 2001, staff and CAF held a meeting with the OPC and Counsel for Talk America in which staff informed all parties that it was reviewing all complaints filed against the company regardless of CAF's initial determination. On June 27, 2001, staff presented Talk America with a summary of its analysis which included a list of the complaints staff believed to be apparent violations and the reasons. Therefore, staff believes that Talk America has been treated fairly and has been given timely notice that consumer complaints initially closed by CAF as non-violations could be considered by staff to be apparent violations.

In addition, Talk America indicated in its settlement offer that if it were required to pay a larger penalty amount, it may

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pull out of Florida. Staff finds it hard to believe that Talk America would forsake \$30 million² in potential future annual revenue obtained from Florida customers if the Commission does not accept its settlement offer and it is required to pay a penalty of more than it has offered. Even so, staff has no indication that Talk America's withdrawal from Florida would adversely affect the public interest or unduly lessen local or long distance competition in Florida.

Accordingly, staff recommends that the Commission should not accept Talk America's settlement offer to make a voluntary payment of \$240,000 to the State of Florida General Revenue Fund to resolve 522 apparent violations of Rule 25-4.118, Florida Administrative Code, Toll, Local Toll, or Toll Provider Selection, 105 apparent violations of Section 364.604(2), Florida Statutes, Billing Practices, and 30 apparent violations of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints, and consequently, this matter should proceed to a hearing.

ALTERNATIVE STAFF ANALYSIS: In its settlement proposal, dated June 11, 2002, Talk America offers to pay \$240,000, in 36 equal monthly installments, to the State of Florida General Revenue Fund to resolve 657 apparent violations cited in the Commission's show cause order No. PSC-01-2107-SC-TP, issued October 23, 2001.

In that Order, 414 of the 657 complaints that the Commission found to be apparent violations were originally closed by CAF as apparent non-violations. Talk America asserts that those 414 complaints should not be eligible for consideration as apparent violations by the Commission because CAF had previously closed the complaints as apparent non-rule violations. Alternative staff disagrees. Alternative staff asserts that only the Commission has the authority to make a binding determination of whether Talk America has or has not violated its rules or Florida Statutes. Further, alternative staff believes that were this matter to proceed to a hearing, the Commission should not be precluded from exercising its adjudicative authority over apparent violations arising out of consumer complaints merely because those complaints were initially closed as non-violations by CAF.

²Talk America reported over \$8 million in intrastate revenue and \$22 million in interstate revenue on its Regulatory Assessment Fee Returns for the calendar year 2001.

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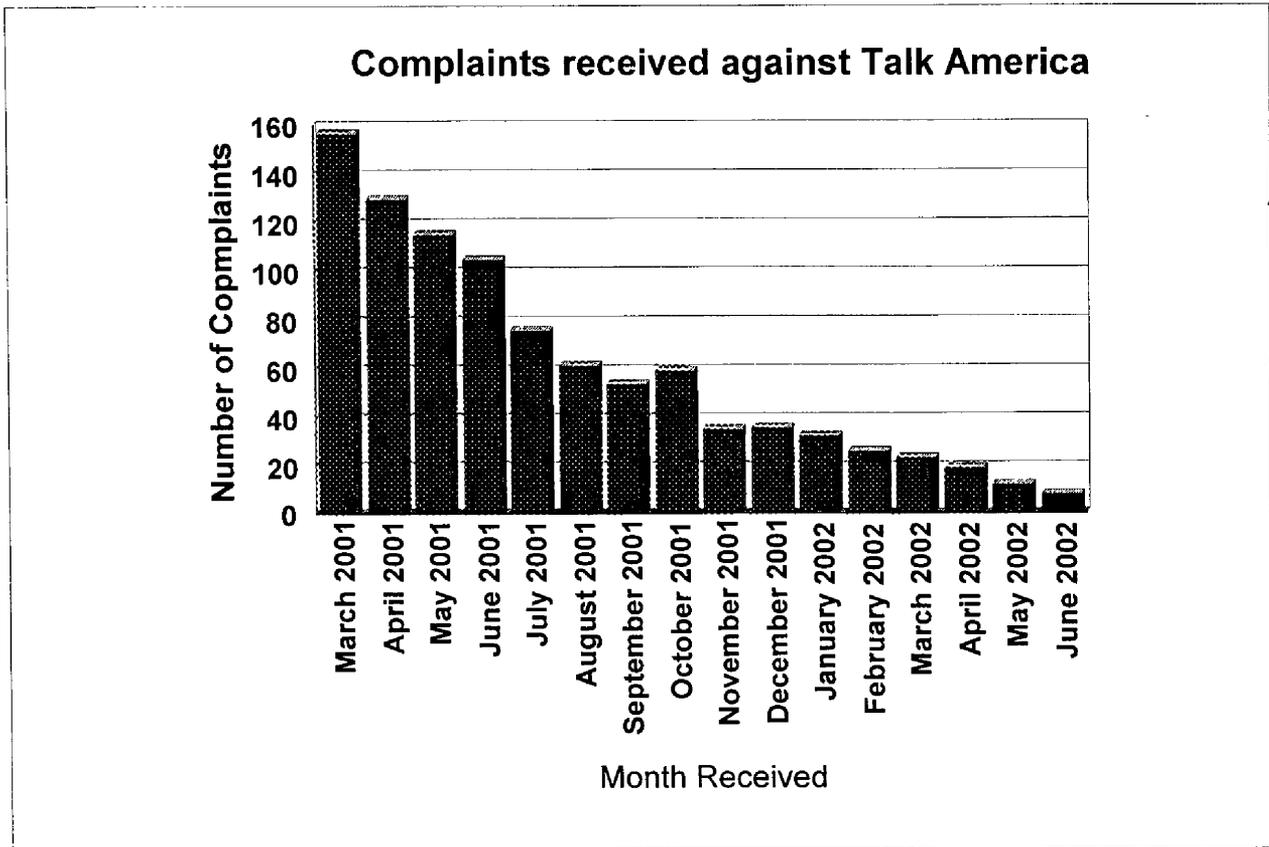
Nevertheless, alternative staff believes that the payment amount of \$240,000 proposed by Talk America is, to a considerable extent, consistent with previous settlement offers accepted by the Commission for apparent slamming violations if, for the sole purpose of settlement, the 414 apparent violations initially closed as non-violations and included in the Commission's show cause order, are not counted. This would leave a balance of 243 apparent violations and the settlement amount would equate to \$988 per apparent violation - an amount more consistent with previous settlement offers.

Given the totality of circumstances in this unique case, in its discretion, the Commission could accept Talk America's settlement offer based on its general consistency with previous settlement offers for similar apparent violations. Should the Commission accept Talk America's settlement offer, its decision in this unique case should not preclude the Commission from exercising its adjudicative authority over other consumer complaints closed as apparent non-violations in other dockets or proceedings.

In addition, it appears that Talk America has taken the necessary actions and corrected the problems causing the large number of complaints which prompted staff's investigation and the OPC's petition. The number of complaints received by the Commission against Talk America has decreased significantly since its peak in March 2001 as illustrated in Chart 1 on page 9. In addition, all of the complaints filed against Talk America have been resolved.

If the Commission approves alternative staff's recommendation and accepts Talk America's settlement offer, the Commission should also put Talk America on notice that staff will monitor the company for strict compliance with the Commission's rules and Florida Statutes and, in the event the complaints against Talk America increase, staff will not hesitate to initiate an investigation into the company's managerial and operational practices.

Chart 1



Accordingly, alternative staff recommends that the Commission should accept Talk America's settlement offer to make a voluntary payment of \$240,000 to the State of Florida General Revenue Fund. The payment should be made in 36 equal monthly intervals in the amount of \$6,667.67 each. The first payment should be received within 30 days from the issuance date of the Commission's Consummating Order and should identify the docket number and company name. Each subsequent payment should be due within 30-day intervals following the first payment and should also identify the docket number and company name. The Commission should forward the payments to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. In addition, if the Commission approves staff's alternative recommendation, all pending motions would be rendered moot.

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ISSUE 2: Should these two dockets be closed?

RECOMMENDATION: No. If the Commission approves staff's primary recommendation, these dockets should remain open pending the resolution of the show cause proceedings and subsequent hearing. However, if the Commission approves staff's alternative recommendation, the order will be issued as a Proposed Agency Action (PAA). In the event that a person whose substantial interests are effected by the PAA order files a protest within 21 days of the issuance of the order, this docket should remain open pending resolution of the protest. If the Commission approves staff's alternative recommendation, and no protest is received, the Order will become final upon issuance of a Consummating Order. Thereafter, Talk America should have 30 calendar days from the issuance of the Commission's consummating order to remit its first payment of \$6,667.67. Both dockets should remain open until Talk America remits all 35 subsequent payments of \$6,666.67 each. Upon remittance of all 36 payments, totaling \$240,000, both dockets should then be closed administratively. **(Christensen, Dodson)**

STAFF ANALYSIS: If the Commission approves staff's primary recommendation, these dockets should remain open pending the resolution of the show cause proceedings and subsequent hearing. However, if the Commission approves staff's alternative recommendation, the order will be issued as a Proposed Agency Action (PAA). In the event that a person whose substantial interests are effected by the PAA order files a protest within 21 days of the issuance of the order, this docket should remain open pending resolution of the protest. If the Commission approves staff's alternative recommendation, and no protest is received, the Order will become final upon issuance of a Consummating Order. Thereafter, Talk America should have 30 calendar days from the issuance of the Commission's consummating order to remit its first payment of \$6,667.67. Both dockets should remain open until Talk America remits all 35 subsequent payments of \$6,666.67 each. Upon remittance of all 36 payments, totaling \$240,000, both dockets should then be closed administratively.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by the Citizens of)
Florida to Investigate TALK.com Holding)
Company and The Other Phone)
Company for Willful Violation of)
Rule 25-4.118, Florida Administrative)
Code)

Docket No. 010409-TP

_____)
In re: Investigation of possible violation of)
Commission Rules 25-4.118 and)
25-24.110, F.A.C., or Chapter 364, F.S.,)
by The Other Phone Company, Inc. d/b/a)
Access One Communications, holder of)
ALEC Certificate No. 4099, and Talk.com)
Holding Corp. d/b/a Network Services d/b/a)
The Phone Company, holder of ALEC)
Certificate No. 4692)
_____)

Docket No. 010564-TX
Filed: June 11, 2002

TALK AMERICA INC.'S OFFER OF SETTLEMENT
(Redacted Copy)

Talk America Inc., f/k/a Talk.com Holding Corp., d/b/a Network Services, d/b/a The Phone Company, d/b/a The Other Phone Company, d/b/a Access One Communications (hereinafter collectively "Talk America"), files this Offer of Settlement with the Florida Public Service Commission ("Commission") for the purpose of resolving the above captioned dockets in a constructive and positive manner. In support of its Offer, Talk America states as follows:

I. INTRODUCTION

1. On October 23, 2001, the Commission issued Order No. PSC-01-2107-SC-TP, ("the Show Cause Order") requiring Talk America to show cause why it should not be fined for alleged rule violations relating to its sales of local and long distance service. The Show Cause

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Order was subsequently amended on January 16, 2002, by Order No. PSC-02-0095-PCO-TP ("the Amended Order").

2. Talk America believes that it has not violated the Commission's statutes or rules. Indeed independent of, and prior to the issuance of these two orders, Talk America had ceased certain business relationships and significantly changed its customer solicitation and service procedures, some of which were the root cause of the complaints identified in the two Orders. In an effort to continue to improve its customer solicitation and service processes, Talk America has implemented further procedures as set forth herein and as previously disclosed to Staff. Today, Talk America's complaints to the Commission have dropped significantly, from a high of 158 in April 2001 to 11 in April 2002. While even the April 2002 level of complaints are unacceptable, this record demonstrates that the extraordinary efforts undertaken by the company to improve service are working. Talk America believes it is more productive and beneficial for it and the Commission to concentrate their time and money on furthering service to customers rather than continuing to litigate over past company practices. Accordingly, Talk America hereby provides the following Offer of Settlement to conclude these dockets.

II. BACKGROUND

3. The basis for the present proceedings are 654 complaints to Talk America on a "Master Violation List." Of those 654 complaints, the Commission's own records reflect that 414 were deemed to be "No Apparent Rule Violation" on the determination form submitted to Talk America at the time of the complaint's investigation and resolution. Despite the fact that there is no new evidence with respect to those complaints, the Commission is now attempting to prosecute and penalize Talk America on the basis of these 414 closed and resolved files. Talk

America believes it would be fundamentally unfair for the Commission to pursue fines with regard to those 414 complaints, which represent 63% of the total complaints at issue. Further, Talk America believes that the Staff's initial determination with regard to the 414 complaints will be persuasive either in the Motion for Summary Judgment or in an ultimate appeal on the issue, which Talk America would certainly pursue.

4. While Staff suggests that the initial determinations issued for the 414 "No Rule Violation" complaints were merely administrative errors, that argument is inconsistent with basic rules of civil procedure as well as the Commission's obligations in the administration of section 258 of the Telecommunications Act of 1996 (the "FCC Slamming Rules"). Under the FCC Slamming Rules, once an administrating agency determines that a complaint is without merit, the subject company is exonerated as a matter of law and may reinstate the original charges that were waived pursuant to the rule's carrier liability requirements. In short, the FCC Rules contemplate and require that a company accused of slamming will waive the charges for the first 30 days of service pending resolution of the complaint; in return, once the administrating agency makes a determination regarding the complaint, Talk America is bound by that determination as is the administrating agency. Fundamental rules of fairness require the Commission to honor its determinations, particularly where, as here, no new facts exist other than a desire for a higher fine.

5. With regard to the 240 remaining complaints, the Staff has either ruled those complaints an "Apparent Rule Violation" or made no finding at all. Talk America believes that the vast majority of those 240 complaints are without merit; indeed, in the event this settlement is not accepted, Talk America intends to require live testimony with regard to each of those

complaints, in keeping with our commitment to obtaining the truth and ultimate exoneration in this proceeding.

III. OPERATIONAL IMPROVEMENTS BY TALK AMERICA

6. In its attempt to consolidate its local and long distance operations and provision facilities-based local exchange services via a UNE-P network, Talk America encountered a variety of significant problems, relating to four central areas: billing, provisioning, verification of the customer's authorization of service, and customer service. Separate and apart from any settlement with the Commission, Talk America has spent in excess of \$10,000,000 to build the infrastructure required to solve these problems and create the structure required to be a successful CLEC in the residential and small business market. Understanding these improvements and their role in Talk America's business plan, is a critical component to this Settlement Offer. Following paragraphs provide a brief description of the problems encountered and the steps Talk America has taken to solve them.

A. BILLING

7. As it began to offer local exchange services, Talk America encountered several types of billing problems including the billing of dial-around or "casual" callers; billing of intraLATA toll calls; delayed billing; billing of erroneous charges; and billing after cancellation.

1. Dial Around Billing Issues

8. Talk America's dial around billing problems stemmed from an internal billing programming error that occurred in the summer of 2000, which caused some consumers to receive incorrect bills for dial-around service. Those bills should have been based purely on usage and instead contained the monthly fees commonly applied to presubscribed customers. In

response to that problem, Talk America immediately contacted all affected customers informing them of the mistake, credited all accounts involved during this time frame (even those that were self-PICs and not dial-around customers) and offered \$25.00 worth of free long distance service with Talk America. Talk America also made significant changes in its billing programs to ensure against any future recurrence of this type of error. Moreover, in an effort to be proactive, Talk America also contacted the Federal Communication Commission (the "FCC") as well as the affected state commissions throughout the country to inform them of the incident and to address concerns consumers may have had as a result of receiving incorrect bills.

9. In March 2001, Talk America experienced an additional dial-around billing issue, of which Talk America again notified all customers, state commissions, including this Commission, and the FCC. Again, the vast majority of the affected customers were "casual callers" or dial-around customers. Due to the dial-around problem that Talk America experienced in the previous summer, these customers had been placed into a non-billing file, suspended from billing and flagged for special treatment. Unfortunately, in March, 2001, as a result of human error, these customers inadvertently were placed back into the regular monthly billing cycles. This resulted in the rating of dial-around calls of these customers at Talk America's standard rates for 1+ presubscribed traffic, as well as the imposition on these casual callers of Talk America's standard monthly recurring fees and taxes commonly associated with presubscribed customers only.

10. Talk America became aware of the billing error on March 19, 2001 and took affirmative action to resolve the situation. Talk America cancelled all of the erroneously-issued invoices and notified or attempted to notify all affected customers by both telephone and mail

that these invoices should not be paid. Talk America did not attempt to collect any of the incorrectly invoiced amounts and promptly issued full refunds of any payments that it received as a result of the issuance of these erroneous invoices. Moreover, Talk America set up a special toll-free number to address any questions or concerns that customers had regarding this billing error.

11. In an effort to prevent a reoccurrence of this type of billing error in the future, Talk America altered its data processing procedures. Specifically, it actively moved the affected customers to a new and separate billing file designed to keep them permanently segregated from Talk America's monthly 1+ presubscribed customer billing group and all other customers until their accuracy could be confirmed and they could be moved correctly into a billing cycle. Moreover, unlike the situation that occurred in the summer of 2000, Talk America amended its system so this affected customer billing file may not be moved "en mass" as before. Rather, these customers may only be moved back into billing on an individual basis, following individual review.

12. Talk America's efforts to productively notify and resolve these problems as soon as the company became aware of them are not the mark of a company intending to take advantage of its customers or willfully violate Commission rules or statutes. Talk America believes it has now fully resolved both the customer problems and the systems procedures that allowed these errors to occur. To the extent that any such billing errors occur in the future, which is very unlikely, Talk America remains committed to expeditiously informing all affected customers and the Commission, and to taking the necessary steps to issue appropriate refunds or credits to affected customers.

2. IntraLATA Service Offerings

13. Other billing problems occurred when Talk America tried to offer calling features and local dialing plans identical to those of BellSouth. Talk America originally tried to mirror the BellSouth plans by offering customers identical calling features and plans. Talk America believes that through its sales process it could explain the differences between its plan and BellSouth's calling plan to customers. However, Talk America learned that it was impossible to mirror the BellSouth plans. Learning from the marketplace, as a competitor should, Talk America found itself forced to change its plans to ones that were easier for consumers to understand and which could be differentiated from the BellSouth plans.

14. As a result, Talk America began to offer free intraLATA plans, through which customers are charged only for in-state long distance calls (*i.e.* interLATA, intrastate toll) and for state-to-state long distance calls, while all local and intraLATA calls remain free of charge, as they may have been to customers on the BellSouth regional plan. For example, a customer call from Miami to Vero Beach is an intraLATA call and thus, on Talk America's free intraLATA plan, there would be no charge to the customer for this call. On the other hand, a call from Miami to Orlando, which is an interLATA, intrastate call, and would be chargeable. To that end, Talk America commenced offering plans that included free intraLATA calling throughout the year 2001. More recently, Talk America has introduced additional calling plans that allow customers to choose plans based on their own calling patterns. For example, a customer who uses limited local calling can select a plan that provides 1000 minutes of local calling, 5 cents a minute state to state calling, 10.9 cents per minute for interLATA in-state usage, and 9.9 cents per minute for

intraLATA usage. This latter plan is designed to attract lower volume, local only customers who make few calls outside their LATAs.

15. Talk America believes that by offering a broader suite of plans it can both attract a broader range of customers and help mitigate consumer confusion over the meaning of intraLATA and regional toll calling. To that end, Talk America is developing tools that will enable sales representatives to "preview" the customer's first bill amount based on information provided by the customer. Similarly, the Talk America scripts now proactively inform customers that there are additional taxes and charges, such as universal service fund fees, 911 and relay charges that total approximately \$14. Finally, as discussed below, Talk America reviews the potential customer's customer service record (where available) from its existing local exchange carrier and uses that information to confirm the features and services the customer has prior to provisioning. Such review further enables Talk America to prevent customers from switching to Talk America in circumstances in which it cannot offer the customer a feature the customer currently has or a service that Talk America does not offer (such as DSL).

16. Again, the net effect of these changed billing and marketing practices have been to more cleanly provide competitive choices for local residential and business customers. The customer complaints associated with the former practices are regrettable, but they reflect the kind of lessons expected in a competitive marketplace. While the marketing alternatives a company offers are always subject to change and refinement, Talk America believes that those billing errors occasioned by its billing plans do not constitute a willful intent to violate legal requirements.

3. Delayed Billing/Erroneous Charges

17. In addition to the corrective action taken with respect to dial-around customers and intraLATA billing, to prevent situations in which customers may be billed incorrectly, Talk America has implemented a bill preview system designed to track billing errors and discover billing abnormalities, such as bills over a usual amount or erroneous or duplicative charges. Bills in which abnormalities are noticed are put into trouble cycles and manually examined to determine the cause of the problem. Moreover, as of May 1, 2001, Talk America issued all customer bills on time, in regular cycles, As discussed more fully below, due to significant changes in Talk America's provisioning procedures, late billing no longer occurs.

4. Billing After Cancellation

18. In addition to the billing problems that Talk America has experienced in the past, there has been and continues to be a delay in the Line Loss Report received from the incumbent local exchange companies ("ILEC"). The Line Loss Report is an electronic informational notice that ILECs provide to CLECs, usually on a daily basis, to confirm the return of a former CLEC customer to the ILEC's network and control. The timely and prompt receipt of a Line Loss Report by a CLEC is essential because it confirms the cessation of CLEC service and the resumption of ILEC service without interruption. More importantly, receipt of the Line Loss Report confirms that the CLEC should cease recording usage information for purposes of billing the customer. Absent receipt of the Line Loss Report on a timely basis, a CLEC has no information as to whether the customer has been removed from the CLEC network, and its systems will continue to service and bill the customer.

19. Talk America has experienced numerous, lengthy delays in its receipt of the Line Loss Report from BellSouth, which has, at times, resulted in Talk America billing customers for local exchange service after they have switched back to BellSouth or to another CLEC. In many instances, the only way Talk America can ascertain for certain that the customer has cancelled its service, is to match up the local lines billed to Talk America by BellSouth at the end of each month with the customer accounts on its service; if BellSouth is no longer charging a customer's lines to Talk America, it is clear that the customer is no longer on Talk America's service. However, if Talk America is compelled to wait for a thirty (30) day period before obtaining *some* proof that a customer is off of its service, Talk America will issue additional bill(s) to customers who believe themselves to be cancelled from Talk America's service, which in turn will continue to result in customer complaints.

20. Talk America continues to place pressure on all LECs nationwide to address the issue of the lag it often experiences in receiving the Line Loss Report; indeed the CEO of Talk America went before Congress on May 2, 2001, to raise this issue, as well as other topics that challenge beleaguered competitive carriers. Over the last year, Talk America has seen dramatic improvement in the quality of Line Loss Reports from BellSouth and appreciates BellSouth's ongoing efforts in that regard. However, problems do continue with late and missing line loss reports and Talk America will continue to work with the ILECs in that regard.

21. Historically, Talk America, as a CLEC which relied on the facilities of the incumbent local exchange company, in this case BellSouth, was reluctant to disconnect a customer from its local exchange service without the customer first directly contacting the incumbent local exchange company (in this case BellSouth). Talk America was concerned that

the customer would lose dial tone and potentially his or her telephone number because the customer would forget to call BellSouth. During the course of this proceeding, at the request of Staff, Talk America developed a system of sending customers who wish to cancel local services a letter directing them to call BellSouth within ten (10) days. Thereafter, Talk America disconnects the customer. However, Talk America has recently learned, in connection with proceedings outside of Florida, that BellSouth will process a pending order prior to a simultaneous order for cancellation. As a result, customers with pending orders still experience difficulties in preventing finalization of their orders. Talk America will continue to press BellSouth to remedy problems with billing after cancellation that may be caused by BellSouth system problems.

22. In the final analysis, Talk America does not deny that the customers who have raised these complaints have very real problems. Talk America has worked, and will continue to work, to assure that customers will not be subject to such issues. However, in view of the complete circumstances, Talk America does not believe the complaints raised by these customers rises to a willful violation of the Commission's rules or statutes.

B. Provisioning

1. General Provisioning Problems

23. Talk America experienced several different types of provisioning problems from year 2000 through May, 2001. In certain instances, additional or second orders were generated for customers following their cancellation of service, which had the effect of signing the customer up again for Talk America's service. This was due to the fact that the customer's initial sign-up order was in a provisioning queue and unfortunately was never moved when the sign-up was fulfilled. As a result, it appeared to Talk America's provisioning personnel that the order

should be processed for the first time, when in fact it was actually processed for a second time. Talk America has since rectified this problem by segregating pending orders from fulfilled orders in a much more systematic way. In so doing, Talk America hopes to prevent this type of problem from future occurrence.

24. Other provisioning problems occurred in the past with respect to lengthy delays in the provisioning of service to customers. However, as of this date all orders are provisioned within the 60 day period required by Commission and FCC rules; indeed 78% within seven calendar days of the date of sale and 90% within 30 days of the date of sale.

25. Many of these provisioning problems occurred following Talk America's August 2000 acquisition of Access One, and were a function of inadequate and poorly-trained personnel during the transition from a small, 50-order-a-day company (Access One) to a much larger but more systematic company that processes on average 1,400 orders per day (Talk America). With the advent of volume automation, the implementation and enforcement of strict provisioning policies, and the segregation into distinct and impossible-to-commingle provisioning buckets, this problem should become a thing of the past for Talk America's customers.

26. Through improvements to Talk America's information technology systems and its back office provisioning, Talk America now segregates customer orders in such a way as to preserve the integrity of those orders set for provisioning. For example, new orders are sent to a provisioning queue or "bucket," cancelled orders are removed from the provisioning "bucket," and any unclear or problematic orders are removed and placed into a segregated cycle. Talk America now is aware when a particular service or customer has not been provisioned *prior* to receiving a complaint. In addition, new customers can check the status of pending orders on line

through a customer service tool developed by Talk America. It is Talk America's belief that the improvements it has made in its provisioning systems will alleviate any delays or inadvertent provisioning that may have occurred in the past.

27. Finally, Talk America has hired and cross trained employees on local and long distance customer service procedures and retained sufficient provisioning staff to handle the volume of cancellation orders. Talk America is committed to ensuring that these employees remain thoroughly trained so as to accurately and expeditiously process the cancellation orders that Talk America receives to prevent such orders from being sent to the ILEC in error. Talk America also has developed an electronic provisioning system based on the historic MANTISS system that has enabled Talk America's provisioning system to be customized to the unique requirements of local provisioning. It is Talk America's belief that better training for its provisioners and implementation of electronic provisioning has and will continue to eliminate the human error of two accounts being set up for the same service or delayed provisioning. The prior errors experienced by the company are the result of growth and competition, not any intent to violate rules or regulations.

2. Promotional Checks – Wrong Billing Telephone Number Issues

28. During the year 2000 through May, 2001, Talk America experienced a number of problems related to provisioning the correct billing telephone number when Talk America had received a valid letter of authorization or third party verification tape. During that period, prospective customers of Talk America received, at times, promotional checks in which the phone number on the check did not match the name of the person who signed the check (or authorized the switch). The person who signed the check authorized the switch by signing the

letter of authorization on the back of the check, but failed to correct the telephone number to the one for which he/she was responsible.

29. In recognition of unauthorized persons switching accounts of third parties, Talk America implemented new procedures to improve the accuracy attending its issuance of promotional checks, a system which it then applied to all orders. These procedures were designed to discover mismatched names/phone numbers *prior to* the mailing of these checks to its prospective customers. For local customers, Talk America manually compared the customer service record ("CSR") that it receives from the ILEC with the name and address of the customer who approves the sale/has signed the check, before provisioning service. For long distance customers, Talk America put into place an automated system that matches up the BNA or CSR, where available, with the telephone numbers that Talk America had on file for the customer. In instances where the customer name/BTN matches are incorrect, Talk America assigns its provisioning staff to manually check the BNA and/or the CSR, where available, with the telephone number(s). Where the BNA and/or CSR are not available, Talk America uses other tools to try to confirm the identity of the owner of the telephone number, such as anywho.com and white pages. Finally, Talk America voluntarily ceased the mass mailing of new promotional checks in May, 2001. It has no intention of issuing promotional checks in the future.

30. The promotional check situation taught Talk America a very important lesson: it is critical to confirm that the person responsible for the account is the same person who authorized the switch. Talk America has implemented the customer service confirmation system mentioned above into all of its orders via all sales channels. By way of example, when Talk America markets its services to a customer via outbound or inbound solicitation, Talk America

requests the customer's permission to check the customer service record while on the telephone with the customer. If the customer is not the person of record on the customer service records (or a spouse), the switch will not be made without further confirmation that the potential customer is the customer of record with authority over the account. Similarly, if the address or other details provided by the customer do not match the information on the BellSouth customer service record, the switch will not be authorized. These changes are but a part of the more sophisticated verification process Talk America now employs to help ensure compliance with all applicable regulatory requirements.

C. Verification

31. Talk America employs a strict, zero-tolerance policy of slamming, cramming, misrepresentation, and any other conduct that violates any applicable law. All employees and independent contractors (telemarketers and third party verification ("TPV") entities) have been notified of the zero-tolerance practice and receive extensive training in Talk America's compliance procedures. Talk America established a monitoring group, responsible for the remote and random monitoring of telemarketing calls in a statistical manner, comparing monitored calls to the approved marketing materials. In addition, Talk America consolidated the regulatory department of all subsidiaries of Talk America (i.e. the former Talk.com Holding Corp. and Access One Communications Inc.) into one department that directly reports to the General Counsel of Talk America. The regulatory department reviews the reports of the monitoring group; it also reviews and has ultimate approval over all sales and marketing material to ensure compliance with all applicable laws, rules, and regulations and ensure compliance with the zero-tolerance policy. To assist in that effort, Talk America hired Sharon Thomas, former

Chief of Staff for the Nevada Public Service Commission, to oversee its complaint department, which is based here in Florida. Ms. Thomas worked at the Nevada Commission for over seven years and brings a total of twenty (20) years of telecom experience to her position in overseeing the Talk America complaints process. Talk America established these centralized groups to ensure strict enforcement of Talk America's zero-tolerance policy and to ensure uniform and expeditious company responses to customer complaints and a heightened awareness of potential verification problems.

32. Talk America is extremely serious about enforcing this policy. To this end, in October, 2000, Talk America terminated its relationship with its former telemarketing agent, Traffix (formerly known as Quintel Corporation) due to its belief that the agent engaged in unauthorized marketing promotions and practices. Any employee or independent contractor who violates Talk America's zero-tolerance policy is immediately terminated. Talk America is engaged in an ongoing review of its current telemarketing and verification scripts to ensure full compliance with federal and state rules regarding the solicitation of customers and the unauthorized transfer of service and affords the same scrutiny to all of its direct mail and on-line promotional campaigns. Talk America also has completed a comprehensive sales training manual which it distributes to all of its telemarketing agents and employees to provide them with centralized information, including Talk America's zero-tolerance policy against slamming and Talk America policies with which all telemarketing agencies and employees must comply.

33. Talk America uses an unaffiliated third party verification company to obtain the oral authorization of subscribers in Florida to submit preferred carrier change orders. This TPV company operates in separate facilities from Talk America, and is not compensated based upon

the number of sales confirmed but rather, on the number of customer calls taken and the duration of these calls. Talk America verifies each oral sale by connecting its customer to its TPV via a three-way conference call to verify the customer's desire to switch carriers; once the TPV gets on the line, Talk America sales representative drops off. The TPV company is instructed by Talk America to confirm the customer's desire to switch carriers by including appropriate verification data, such as the subscriber's social security number, date of birth, or mother's maiden name. The TPV company is assisted by its ability to receive data electronically from Talk America's proprietary online processing system ("OPS") which the TPV company then confirms. Once the TPV is completed, the recording is transferred electronically to Talk America's system and is available to customer service and regulatory representatives within 24 hours, thereby enabling such representatives to play such recording for any customer who calls Talk America with questions about the sales process.

34. In April, 2000, Talk America implemented an improved company-wide monitoring and tracking system for customer complaints, which it utilizes to adhere to the FCC's requirements for reporting the number of alleged slamming complaints each carrier receives throughout the calendar year. This system tracks and reports the number of alleged slamming complaints received by Talk America; the number of alleged non-slamming complaints investigated by Talk America; and the number of alleged slamming and non-slamming complaints involving local, intrastate, and interstate interexchange services, whether investigated or not, that Talk America has chosen to resolve with the customer.

35. Talk America is committed to working with the Florida PSC to implement whatever reasonable additional procedures are necessary to continue improving the quality of

service received by Talk America's Florida customers. By way of example, at Staff's request, Talk America is working on implementation of a procedure to enable the Staff to warm transfer customers who call the Florida PSC to Talk America's regulatory department. This process has enabled the kind of direct communication between the customer, Commission, and the company that resolves questions or problems more efficiently and promptly.

36. Finally, Talk America has implemented script changes as suggested by the Florida PSC Staff. Specifically, Talk America has added additional disclosures to its telemarketing scripts to better meet the requirements of Florida Administrative Code Rule 25-4.118(2). Marketing may be the most difficult part of providing telephone service, and it is a process that requires constant attention. Without marketing a business in this competitive market cannot long survive. Thus, how Talk America markets is a constant learning process. The company may have had customer problems in the past with its marketing methods, but the efforts over time should demonstrate a company intending to only do better. Sacrificing customer service for marketing is guaranteed failure in the long run, and through its acquisitions and other actions, it should be clear that Talk America is here for the long haul.

D. Customer Service.

37. When Talk America initially entered into the local market, it experienced long hold times in customer service. Talk America substantially revamped its customer service department, hiring and cross training all of its representatives on local, and implemented new tracking mechanisms and customer service tools in order to substantially reduce hold times. Currently, the average hold time is less than three (3) minutes, and just last week the average longest hold time for customer service question related to local service was 47 seconds. The

company is committed to reducing wait times, and will continue to make changes and refinements to improve on this record.

IV. RESULTS OF IMPROVEMENTS – DRAMATIC DECLINE IN COMPLAINTS

38. The proof of the results of Talk America procedures is found on Attachment A, incorporated herein by reference. Complaints filed with the PSC have dramatically declined; indeed, nationwide Talk America's complaints have dramatically declined. Where in March 2001, Talk America had 153 complaints filed with the Florida PSC in April 2002, Talk America had only 11 such complaints.

39. Talk America believes that those reductions are a direct result of its \$10,000,000 investment in its back office systems and improvements outlined above. Simply put, billing and provisioning are up-to-date and accurate. Talk America has discontinued use of promotional checks, fired rogue marketing agents, hired talented and experienced personal to build, oversee, and implement a very tight marketing, sales, provisioning, customer service, and billing system. These improvements have been made at a time when many CLECs are abandoning the residential market altogether and despite the tremendous challenges that face the CLEC industry in general, as discussed below. But they were made as a testament to Talk America's faith in the residential market and the efficacy of its sales and operational abilities.

V. STATE OF COMPETITION

40. Talk America respectfully requests that the Commission consider the abysmal state of the competitive local exchange market when evaluating Talk America's offer. Talk America is among a very few companies that have actively sought to compete in the residential local exchange market at a time when its few brethren who initially attempted to serve that

market are now abandoning it. At the same time, a number of CLEC bankruptcies have been caused in part by the contraction of available financing and in part by the technical and financial difficulties inherent in providing local services. The CLEC bankruptcies have led to a further contraction of available financing to the remaining few carriers. As a result, Talk America will not be able to obtain financing from third parties, and thus must use its existing and limited resources to fund the proposed settlement.

41. Despite the increasing CLEC failures, the difficulties in obtaining financing, and the technical difficulties that has hampered Talk America's competitors in their efforts to offer residential competition, Talk America believes it can survive if it focuses on its most important asset -- its customers. Talk America employs approximately 850 employees in Florida (in its three offices located in Palm Harbor, Orlando, and Fort Myers) who are dedicated to providing high-quality service to its customer. We are confident that with a reasonable settlement with the Florida PSC, Talk America will be able to continue to employ those customer service representatives to service its ██████████ Florida customers. Talk America has been able to reach similar settlements with other state commissions on that basis -- North Carolina, Georgia, and Alabama -- and its solid relationships with those Commissions after such settlements demonstrates Talk America's firm commitment to working with the regulatory commissions to improve its processes and the competitive experience of the respective state's consumers. Talk America hopes to be able to achieve a similar settlement with the Florida Commission.

VI. SETTLEMENT PROPOSAL

42. In making this settlement proposal, Talk America recognizes that the Commission's preferred method of returning revenues to customers is by a direct refund to the

affected customers. In this particular situation, such a refund has already been given in the form of credits and refunds granted between July 1999 and May, 2001 (the "Show Cause Period") of approximately [REDACTED]. In addition, in an effort to amicably resolve other consumer complaints, the company issued further credits and refunds to thousands of other Florida customers whose bills, charges, and/or switches were not in error. Those further credits and refunds, which exceed [REDACTED] during the Show Cause Period, were given as a courtesy for the sole purpose of giving customers the benefit of any doubt whenever reasonably possible. Talk America has thus already disgorged any profit that it might have derived from the sales at issue in the Show Cause by issuing refunds and/or credits to affected customers, resulting in free telephone service to a large number of Florida consumers. Thus, the real question for this Commission is with the customers made whole, what additional amount to the State of Florida, if any, is an appropriate resolution.

43. Talk America believes that it has a strong case, as is reflected in its Motion to Dismiss, Motion for Summary Final Order, Memorandum of Law in Support of the Motion for Summary Final Order, and the Initial Response, all filed on March 19, 2002. In addition, the Motion for Summary Final Order filed June 11, 2002, further identifies serious flaws in the Order to Show Cause and the Amended Order. Talk America notes that the Motion for Summary Final Order filed June 11, 2002, argues that based on McGann vs. Florida Election Commission, 803 So. 2d 763 (November 6, 2001), the maximum fine that the Commission could levy in the Show Cause is \$110,000.

44. Notwithstanding its belief that it shall prevail at trial or on appeal, if necessary, Talk America believes it is in everyone's best interests to resolve this matter equitably and

without further delay. Accordingly, Talk America proposes to make a voluntary payment to the General Revenue Fund of the State of Florida in the amount of Two Hundred Forty Thousand Dollars (\$240,000). Talk America would make this payment in thirty six (36) equal installments, with the first installment payable within thirty (30) days of the date the order approving this proposal becoming a final order under Florida law.

45. Talk America believes that this amount, when added to the [REDACTED] of credits and refunds already issued by Talk America to the customers at issue in this case plus the [REDACTED] in additional credits and refunds reflects a very appropriate conclusion to this matter. As the company has maintained throughout this investigation, Talk America has issued credits and refunds to all customers who alleged that they were incorrectly billed or switched. It would be unreasonable and inconsistent with important public policy objectives for the Commission to levy any fine beyond the amount set forth in this settlement offer. A higher additional penalty could ultimately force Talk America to withdraw from the state, abandoning approximately [REDACTED] local and long distance customers, thereby removing a competitive alternative that these customers have chosen. If Talk America were compelled to withdraw from the state, it would a strong incentive to close its offices in Palm Harbor, Orlando, and Fort Myers, Florida. Such a move would jeopardize the employment of Talk America's current Florida work force of over 850 people.

46. In short, if the Commission moves forward with litigating this case, an ultimate resolution could be years away. In the interim, the company and the Commission will be forced to expend their resources on motion arguments, discovery, a hearing that could take five weeks and involve examination and cross examination of over 600 consumers, and appeals to the

Supreme Court of Florida and/or the Federal Courts. Through an amicable settlement, by contrast, the company could continue to focus its financial resources on investments that benefit customers and the Commission could avoid the need to address problematic legal issues, while ensuring an adequate contribution to the Florida General Fund to compensate for any perceived errors not already remedied by Talk America.

VII. CONCLUSION

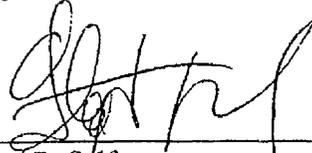
47. Talk America makes this offer solely in connection with its effort to settle and resolve this investigation, and it may not be used for any other purpose. Talk America does not admit to any wrongdoing, and submission of this proposal and its acceptance by the Commission shall not be construed as any admission of liability on the part of Talk America or any of its agents, employees, or officers, or affiliates. Talk America 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.

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

49. Talk America appreciates the Commission's thoughtful consideration of this offer.

If the Commission would like any further information, please contact undersigned counsel.

Respectfully submitted



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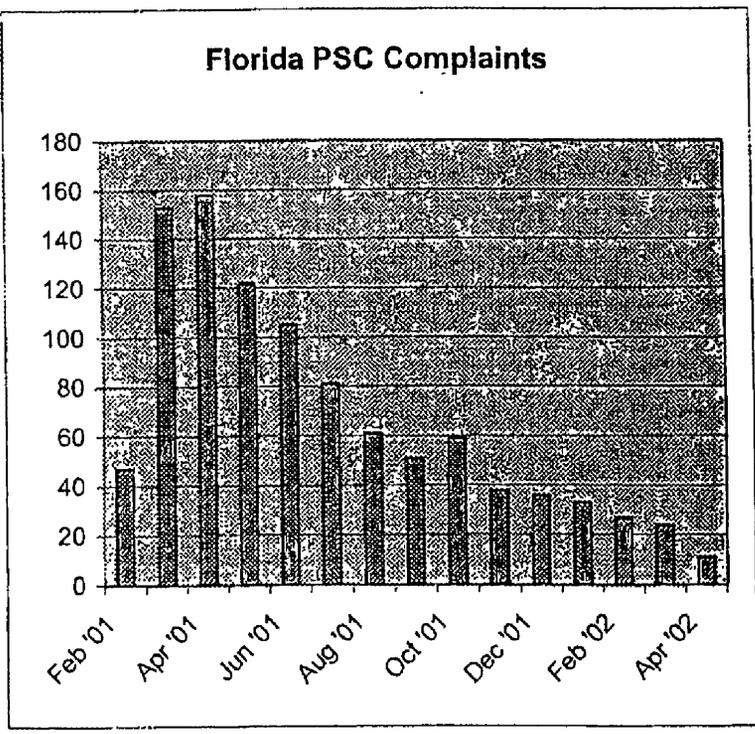
Attorneys for Talk America, Inc.

Docket No. 010409-TP and
 Docket No. 010564-TX

Talk America Offer of Settlement
 Attachment A

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 June 11, 2002

Month	Complaints
Feb '01	47
Mar '01	153
Apr '01	158
May '01	122
Jun '01	105
Jul '01	81
Aug '01	61
Sep '01	51
Oct '01	59
Nov '01	38
Dec '01	36
Jan '02	33
Feb '02	27
Mar '02	24
Apr '02	11



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing have been served upon the following parties by Hand Delivery (*) and/or U.S. Mail this 11th day of June, 2002.

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