**FLORIDA 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**

 **APRIL 4, 1996**

**TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING**

**FROM: DIVISION OF LEGAL SERVICES (BILLMEIER)**

 **DIVISION OF COMMUNICATIONS (L. KING, MOSES)**

**RE: DOCKET NO. 950149-TC - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST NORTH AMERICAN INTELECOM, INC. FOR VIOLATION OF COMMISSION RULES AND ORDERS.**

 **DOCKET NO. 930416-TC - INVESTIGATION OF NORTH AMERICAN INTELECOM, INC. FOR INCORRECT BILLING OF COLLECT CALLS FROM VARIOUS PRISONS.**

**AGENDA: APRIL 16, 1996 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\950149A.RCM**

 **CASE BACKGROUND**

 Currently, two show cause dockets are open against North American InTeleCom, Inc. On July 26, 1993, the Commission issued Order No. PSC-93-1083-FOF-TC in Docket No. 930416-TC ordering NAI to show cause why it should not be fined or have its certificate cancelled for charging rates in excess of the pay telephone rate cap established by Order No. 24101. Docket No. 950149-TC was opened in February 1995, to address alleged violations not covered by Order No. PSC-93-1083-FOF-TC. On March 14, 1995, the Commission issued Order No. PSC-95-0349-FOF-TC requiring NAI to show cause why it should not be fined or have its certificate cancelled for seven alleged violations of various pay telephone rules. NAI filed timely responses to each show cause order and requested a hearing on the allegations.

 NAI, in an attempt to avoid the uncertainty and expense of litigation, filed a motion to refer the dockets to voluntary mediation. On April 6, 1995, the prehearing officer referred these dockets to mediation by Order No. PSC-95-0452-PCO-TC.

 NAI and staff met in mediation on June 8, 1995 and June 21, 1995. During mediation, staff and NAI agreed upon a mechanism to present the issues to the Commission for resolution. It was agreed that NAI would file two settlement proposals. Settlement Proposal I would dispose of the issues on which staff and NAI agreed. Settlement Proposal II would present to the Commission for resolution the issues on which staff and NAI did not reach agreement. This bifurcated settlement mechanism gave the Commission the option of approving the settlement in part and rejecting other portions. It prevented the Commission from being put in a position where it had to reject many good ideas simply because it disagreed with a portion of the proposal.

 The Commission approved Settlement Proposal I by Order No. PSC-96-0354-AS-TC, issued March 13, 1996. Under Settlement Proposal I, NAI agreed:

1. to make a voluntary contribution to the General Revenue Fund of $25,000;
2. to refund $35,000, plus interest, for the six facility misrating problem; and
3. to refund at least $15,000 for the AT&T discount rounding problem.

 The Order further stated that NAI had not provided interexchange service without a certificate in violation of Rule 25-24.470, Florida Administrative Code. Order No. PSC-95-0349-FOF-TC also alleged NAI violated Rules 25-24.630(2)(b) and 25-24.515(9), Florida Administrative Code, and Order No. 14529. While NAI believed it could show it did not violate these Rules or the Order, it agreed to abide by the staff interpretation of the Order and not further litigate the issues.

 Settlement Proposal II dealt with the issues that staff and NAI could not resolve at mediation. Two issues remained in dispute after mediation: (1) the refund mechanism; and (2) the amount to be refunded due to the one minute billing problem. NAI proposed to refund directly to end users the amount overcharged, less 80% of the amount NAI paid into the Inmate Welfare Fund under its contract with the Department of Corrections (DOC). Since the company did not believe it could locate all overcharged customers, it offered to pay the remaining amount to the General Revenue Fund, less the costs of attempting the direct refunds. At the February 20, 1996 Agenda Conference, the Commission deferred consideration on this proposal.

 On March 19, 1996, NAI submitted a revised Settlement Proposal II (Attachment 1). In Issue 1, staff recommends the Commission find revised Settlement Proposal II to be in the public interest and accept it. In Issue 2, staff recommends these dockets be kept open to monitor the status of the refund.

 **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission accept North American InTeleCom, Inc.'s Settlement Proposal II as revised on March 19, 1996?

**RECOMMENDATION:** Yes. The Commission should accept North American InTeleCom, Inc.'s Settlement Proposal II as revised on March 19, 1996.

**STAFF ANALYSIS:** Staff recommends the Commission accept NAI's Settlement Proposal II. Each element of NAI's proposal will be discussed in turn.

 (1) NAI proposes to audit its records from January 1, 1993 through July 1, 1994 and refund directly to customers the entire amount overcollected due to the one-minute billing problem. The exact amount is presently unknown. In previous correspondence, NAI has estimated the amount, using staff's legal analysis, to be approximately $394,318. NAI will report to staff, at the conclusion of its audit, the exact amount it will attempt to refund.

 (2) In addition, NAI proposes to submit a status report within 120 days of approval on the status of the refunds. The report will detail the amount refunded, the amount pending and appropriate interest calculations. NAI does not expect to be able to locate all of the overcharged customers. Therefore, the report will project the amounts NAI will not be able to refund and propose an appropriate disposition of the remaining monies.

 Staff believes this proposal is in the public interest and should be accepted. Under this plan, NAI will provide direct refunds, plus interest in accordance with Rule 25-4.114, Florida Administrative Code, to the customers overcharged. Further, by performing an audit of its records, NAI will refund to customers the exact amount overcharged. The proposal also eliminates the uncertainty of future litigation. NAI believes if all issues were litigated, it could show its liability to be approximately $64,310. However, to settle these dockets, NAI proposes to forego litigation and refund all overcharged amounts.

 Staff's previous objection to NAI's Settlement Proposal II was that it subtracted commission payments paid to DOC from the overcharges and did not propose to refund all overcharged amounts. Under this revised settlement proposal, NAI has offered to refund the entire overcharged amount to those end users they can locate. They will propose a method to dispose of the monies that cannot be refunded, because the end user cannot be located, once that amount is determined. NAI's proposal accomplishes two important objectives: (1) it refunds the entire amount overcharged due to the one minute problem to end users that can be located; and (2) it prevents protracted litigation. Staff believes NAI's proposal is in the public interest and recommends the Commission accept it.

**ISSUE 2:** Should these dockets be closed?

**RECOMMENDATION:** No. These dockets should remain open to monitor the status of the refund.