FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

SEPTEMBER 11, 1997

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

FROM: DIVISION OF COMMUNICATIONS (ISLER)
DIVISION OF LEGAL SERVICES (BOWMAN)

RE: DOCKET NO. 970968-TP - NORTH AMERICAN INTELECOM, INC. - PETITION FOR EXEMPTION FROM RULES 25-4.113, 25-24.471(4)(c), AND 25-24.515(17), FLORIDA ADMINISTRATIVE CODE, AND FOR AUTHORIZATION TO DISCONTINUE SERVICE WITHOUT NOTICE AND TO REQUIRE ADVANCE PAYMENT FOR SERVICE FROM CERTAIN CUSTOMERS, AND FOR SUCH OTHER RELIEF AS MAY BE APPROPRIATE

AGENDA: SEPTEMBER 23, 1997 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: OCTOBER 15, 1997 - STATUTORY DEADLINE FOR DECISION

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\970968TP.RCM

CASE BACKGROUND

North American InTeleCom, Inc. (NAI) holds Interexchange Certificate No. 4697 and Pay Telephone Certificate No. 2459. The company provides telecommunications services to inmate facilities.

On July 17, 1997, NAI petitioned the Commission for exemption from Rules 25-4.113, 25-24.471(4)(c), and 25-24.515(17), Florida Administrative Code, and for authority to discontinue service without notice and to require advance payment for service from certain customers. The company advised that it must pay all local access and long distance charges for collect calls even though NAI may not collect from the end users who accepted the calls. NAI believes the main causes of the loss are: (1) some customers incur charges and have no intention of paying (toll fraud); (2) some customers are unaware of the volume of collect calls accepted; and, (3) some customers are not aware that any calls are being accepted at their telephone number. (ATTACHMENT A)

To control the problem, the company developed a Customer Assistance Awareness Program (CAAP). Using CAAP allows the company to monitor the charges. If an end user exceeds $50 per day, $100 per week or $250 in a 28-day period, NAI contacts that customer and asks the customer to pay to the local exchange company (LEC) an amount equal to the charges accrued so far as a condition to having the ability to continue accepting collect calls.

If the customer cannot or will not make the payment, NAI will contact the LEC, with the customer's permission, to assess the customer's credit history. If the customer has a good payment history, the customer may continue to accept collect calls. Otherwise, NAI blocks that telephone number from being able to accept collect calls. The block is removed once NAI verifies with the LEC that payment was made.

If NAI is unable to contact a customer or suspects toll fraud due to a very high volume of calls, NAI will block the number without first contacting the customer. NAI also blocks a line if a LEC cannot bill NAI's charges because of a changed number or the LEC placed a block that NAI did not discover through its validation process.

Pursuant to Section 120.542(6), Florida Statutes, notice of NAI's request for exemption was submitted to the Secretary of State for publication in the Florida Administrative Weekly on July 30, 1997. No comments were submitted during the comment period, which ended August 25, 1997. The Commission must rule on the petition by October 15, 1997, pursuant to Section 120.542(7), Florida Statutes.

Because the CAAP policy appears to violate certain Commission rules, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant NAI's request for an exemption from Rules 25-4.113, 25-24.471(4)(c), and 25-24.515(17), Florida Administrative Code, to permit the company to block collect calls to consumers NAI believes to be a credit risk, and to require advance payments before providing a bill and completing additional calls?

RECOMMENDATION: No.

STAFF ANALYSIS: Section 120.542, Florida Statutes, authorizes agencies to grant variances and waivers to the requirements of their rules, if petitions for such variances and waivers are consistent with the requirements of the statute. Section 120.542, Florida Statutes, requires the agency to grant the variance or waiver if the person subject to the rule demonstrates that "the purpose of the underlying statute will be or has been achieved by other means by the person" and if "the application of the rule would create a substantial hardship or would violate principles of fairness." Section 120.542(2), Florida Statutes. The statute goes on to define "substantial hardship" as a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. According to the statute, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Section 120.542(7), Florida Statutes, requires the Commission to issue an order in writing granting or denying the petition and stating the relevant facts and reasons for the Commission's decision. The Commission's decision must be supported by competent substantial evidence.

Section 364.10(1), Florida Statutes, prohibits telecommunications companies from giving any undue or unreasonable preference or advantage to any person or locality or to subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

North American InTeleCom, Inc.'s Petition

In its petition, NAI states that it provides telecommunications services to various confinement facilities and retail outlets and suffers significant losses from nonpayment of charges for collect and third-party calls. NAI developed a Customer Assistance Awareness Program (CAAP) to control their

losses. The company's petition states that it believes this will benefit all consumers by reducing NAI's bad debt which allows the company to offer more competitive pricing of its services.

Rule 25-4.113, Florida Administrative Code

This rule governs how a company may refuse or discontinue service to its customers. The company has requested a waiver of every subsection of Rule 25-4.113, Florida Administrative Code, as NAI does not believe the rule should apply to NAI. Staff, however, does not believe it is appropriate to grant a waiver of this rule because Rules 25-24.471(4)(c), Florida Administrative Code, and 25-24.515(17), Florida Administrative Code, prohibit blocking of inmate calls. In addition, concerning calls made from inmate facilities, it is staff's understanding that each number an inmate is allowed to call is pre-authorized by the Department of Corrections (DOC). Since unauthorized calls are already blocked by DOC, staff does not believe the calls appear to be fraudulent. In addition, in the company's petition, it stated that a customer's line may be blocked without notice if the local exchange company placed a block that NAI did not discover through its validation process. Staff believes that it is NAI's responsibility to discover which blocks a customer has requested from the LEC to avoid carrying any unwanted calls. Concerning third party calls made from payphones, it is staff's understanding that most operator service providers will not carry a call if the party at the billed-to number does not accept the charges.

Under the circumstances, staff does not believe a waiver of Rule 25-4.113, Florida Administrative Code, is appropriate.

Rules 25-24.471(4)(c) and 25-24.515(17), Florida Administrative Code

Rule 25-24.471(4)(c), Application for Certificate, Florida Administrative Code, states:

> Where only one interexchange carrier is available in a confinement facility, that interexchange carrier shall provide for completion of all inmate calls allowed by the confinement facility.

Rule 25-24.515(17), Pay Telephone Service, Florida Administrative Code, states:

> Providers serving confinement facilities shall provide for completion of all

inmate calls allowed by the confinement facility.

Staff is further concerned that inmate calling is probably the only area of the telecommunications industry that remains a monopoly in that neither the inmates nor the subscribers accepting the charges have a choice as to which company will handle the call. As a result, the cost of inmate calls are some of the highest allowed.

Since NAI blocks billed-to numbers, which very possibly may belong to customers in good standing with the LEC, it appears the company is in direct violation of Rules 25-24.471(4)(c) and 25-24.515(17), Florida Administrative Code.

Staff is also concerned that NAI's CAAP policy duplicates fraud control measures that LECs undertake. Currently, if a LEC has a billing and collection contract with an IXC, then the LEC takes the responsibility to require a deposit, send an interim toll bill, and/or disconnect service for nonpayment, if necessary.

NAI stated that because it suffers significant losses from nonpayment of charges for collect and third number billing calls, it should be granted an exemption from these rules. Although fraud is a problem that is faced, not only by NAI, but all telecommunications companies, NAI has not demonstrated that application of the rules would result in a substantial hardship for NAI. And, since all telecommunications companies must deal with the same problem, staff does not believe the application of the rules to NAI would result in violations of principles of fairness since NAI would be treated no differently than other companies. NAI has not, therefore, established a basis, in accordance with Section 120.542(2), Florida Statutes, upon which its petition could be granted.

Because NAI's petition does not meet the requirements of Section 120.542, Florida Statutes, staff recommends that its petition for exemption of Commission Rules 25-4.113, 25-24.471(4)(c), and 25-24.515(17), Florida Administrative Code be denied.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the Commission's proposed agency action, files a protest within twenty-one days, this docket should be closed.

STAFF ANALYSIS: If no person whose substantial interests are affected, files a timely request for a Section 120.57, Florida Statutes hearing, no further action will be required and this docket should be closed.

ATTACHMENT A
DOCKET NO. 970968-TP
DATE: SEPTEMBER 11, 1997

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for exemption from Rules 25-4.113, 25-24.471, and 25-24.515 and for authorization to discontinue service without notice and to require advance payment for service from certain customers, and for such other relief as may be appropriate, by North American InTeleCom, Inc.	)	Docket No. Filed:

PETITION FOR EXEMPTION

Pursuant to Commission Rule 25-24.505 (3), Florida Administrative Code, North American InTeleCom, Inc. ("NAI") petitions the Florida Public Service Commission (the "Commission") for an exemption from rules 25-4.113, 25-24.471, 25-24.515, and other rules, to the extent necessary to enable NAI to implement a program to control losses arising from nonpayment for its services. In support of its petition, NAI states:

INTRODUCTION

1. Petitioner's complete name and address is:

North American InTeleCom, Inc.
14100 San Pedro, Suite 400
San Antonio, Texas 78232

2. All notices, pleading, orders, and other materials in this docket should be directed to the following on behalf of NAI:

Patrick K. Wiggins
Wiggins & Villacorta, P.A.
501 East Tennessee Street
Post Office Drawer 1657
Tallahassee, Florida 32302

Alice King
Attorney
North American InTeleCom, Inc.
14100 San Pedro, Suite 400
San Antonio, Texas 78232

3. NAI is certificated by the Commission to provide interexchange telecommunications services.

RELIEF REQUESTED

4. NAI requests an exemption from Rule 25-4.113 (Refusal or Discontinuance of Service by Company); Rule 25-24.471 (Application for Certificate), and Rule 25-24.515 (Pay Telephone Service), and any other rules which the Commission interprets as prohibiting carriers from blocking calls and requiring advance payment, to the extent necessary to permit NAI to block calls (with and without notice) and to require advance payment for services from customers pursuant to reasonable loss control procedures.

BACKGROUND

5. NAI owns and manages inmate telephones and pay telephones at various confinement facilities and retail outlets in Florida. Local and long distance collect calls from inmate telephones are carried by the local carrier or NAI's long-distance carrier. Local and long distance collect and third-party billed calls from pay telephones are carried by the local carrier or by NAI's long distance carrier unless the customer selects another carrier. (Collect and third-party billed calls are hereafter referred to as "Collect Calls.")

6. NAI collects its charges for Collect Calls from the accepting customer by having its charges included on the accepting customer's bill from the local telephone company.

7. NAI is obligated to pay all local access and long distance charges for Collect Calls transmitted by the local carrier or by NAI's long distance carrier, regardless

of whether it is able to collect its charges from its customers. NAI suffers significant losses from non-payment of charges for Collect Calls. For example, losses related to some locations may equal up to 20% of NAI's monthly revenue. These losses from unpaid charges make it costly for NAI to operate, and ultimately result in higher charges for NAI's customers.

8. NAI believes that these losses are caused by several factors. In some instances, customers incur charges with no intention of paying them (toll fraud). NAI has also discovered that many customers who accept Collect Calls are not aware of the volume of calls accepted at their number. For example, a customer may be aware that she has accepted 10 calls but not know that her spouse has also accepted 10 calls. Some customers may not be aware that calls are being accepted at their telephone number at all. These customers are surprised by the amount of the charges included on their billing statements and may be unable or unwilling to pay.

9. NAI has developed a Customer Assistance Awareness Program ("CAAP") to control these losses. Under the CAAP, NAI monitors the amount of charges for calls accepted for billing by a particular number. If the volume exceeds certain parameters (currently $50 per day, $100 per week, or $250 per 28 days), NAI attempts to contact the accepting customer to notify them of the amount of the charges incurred. If NAI is able to reach the customer, NAI asks the customer to make a prepayment to the local telephone company equal to NAI's outstanding charges as a condition to permitting the customer to accept additional Collect Calls from NAI's phones. If the customer is unwilling or unable to make the payment NAI, with the customer's consent, contacts the

local telephone company to assess the customer's creditworthiness. If NAI is able to verify that the customer has a good credit history with the local telephone company, NAI continues to permit Collect Calls from NAI's telephones to be accepted at that telephone number. If NAI is unable to verify the customer's credit history, or the customer does not have a good credit history, NAI blocks the number. NAI removes the block when the customer informs NAI that he or she has made the requested prepayment and NAI confirms the prepayment with the local telephone company. In instances where NAI is unable to contact the customer after repeated attempts, or where the volume or nature of calls is so dramatic that NAI suspects toll fraud, NAI may block the line without first notifying the customer.

10. NAI also blocks calls to a telephone number if the local phone company notifies NAI that charges for a particular line are unbillable or uncollectible. For example, a local telephone company may be unable to bill NAI's charges because the customer has changed his or her telephone number, or because the local company placed a block on the line that NAI did not discover through its validation process.

11. NAI believes that its CAAP procedures are a reasonable and effective means of controlling unpaid charges for Collect Calls. For example, before NAI implemented its CAAP program in one regional operating area, its losses from bad debt were in excess of 20% of revenue. NAI's bad debt in this area is now 10-11%. This reduction in bad debt allows NAI to offer more competitive pricing for its services, which ultimately benefits NAI's customers. Although some customers may be asked to pay for charges prior to their normal billing date, NAI believes that the benefit to all consumers

of controlling these losses outweighs the inconvenience to those few customers who incur charges in excess of the CAAP parameters.

WHEREFORE, NAI respectfully requests that it be granted the relief requested herein, and such other relief as is consistent with this petition.

Respectfully submitted, this 17th day of July, 1997.

WIGGINS & VILLACORTA, P.A.

by: Patrick K. Wiggins

Patrick K. Wiggins
501 East Tennessee Street
Post Office Drawer 1657
Tallahassee, Florida 32302

Alice King
Attorney
North American InTeleCom, Inc.
16400 San Pedro, Suite 400
San Antonio, Texas 78232

Attorneys for North American InTeleCom, Inc.

FPTA
FLORIDA PUBLIC TELECOMMUNICATIONS ASSOCIATION

August 15, 1997

-----VIA FACSIMILE-----

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

Re: Docket No. 970962-TC Docket No. 970968-TP
Docket No. 970971-TC Docket No. 970975-TC

Dear Ms. Bayó:

The Florida Public Telecommunications Association, Inc. requests that it be included on the mailing list as an interested entity in each of the above-referenced dockets. Please address all correspondence as follows:

Angela B. Green, General Counsel
Florida Public Telecommunications Association, Inc.
125 South Gadsden Street, Suite 200
Tallahassee, Florida 32301

Thank you for your assistance with this matter.

Sincerely,

Angela B. Green
General Counsel

970962mailinglist.doc