

State of 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-

DATE: May 31, 2001

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

FROM: DIVISION OF LEGAL SERVICES (J. FUDGE) *AK*
DIVISION OF COMPETITIVE SERVICES (BUYS) *DRB*

RE: DOCKET NO. 010017-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST 1ST AMERICAN TELECOM, INC. FOR APPARENT VIOLATION OF RULE 25-24.910, F.A.C., CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED, AND RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES.

AGENDA: 06/12/2001 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010017.RCM

RECEIVED
 DIVISION OF RECORDS AND REPORTING
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CASE BACKGROUND

- September 21, 2000 - Staff received a call from a distributor regarding prepaid calling cards that were purchased from 1ST American Telecom, Inc. (1-AT). The caller claimed that the cards were inoperative and that 1-AT failed to refund his money. The customer was unable to provide a sample calling card. 1-AT is not certificated as a telecommunications company by the Commission.
- September 26, 2000 - Staff mailed a certified letter (Attachment A) to Mr. Nicholas Ladas, President of 1-AT, requesting information about the company's prepaid calling card operations. Staff requested a written response by October 22, 2000.
- October 4, 2000 - Staff received the U.S. Postal Service certified mail receipt indicating 1-AT received the letter on October 2, 2000.

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FPSC-RECORDS/REPORTING

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- November 3, 2000 through November 12, 2000 - Staff attempted to contact Mr. Ladas via telephone on four separate occasions.
- November 20, 2000 - Staff sent a second certified letter (Attachment B) to 1-AT. Staff requested a written response by December 8, 2000.
- November 28, 2000 - Staff received the U.S. Postal Service certified mail receipt indicating 1-AT received the letter on November 24, 2000.
- December 8, 2000 - A representative from 1-AT contacted staff and stated that the company was in the process of applying for a certificate. Staff requested that 1-AT provide a written response outlining its intentions.
- December 27, 2000 - Having received no response from 1-AT, staff contacted 1-AT to inquire about the status of its application.
- January 2, 2001, - Staff opened this docket to initiate show cause proceedings against 1-AT for the apparent violation of Rule 25-24.910, F.A.C., Certificate of Public Convenience and Necessity Required, and Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.
- January 8, 2001 - In continuing its investigation, staff called 1-AT in an attempt to acquire a sample prepaid calling card. A company representative agreed to send staff a letter describing the company's operations and also agreed to send staff samples of 1-AT's prepaid calling cards by January 19, 2001.
- February 5, 2001 - A Commission staff member in Miami visited 1-AT's office to obtain sample prepaid calling cards. Staff obtained two prepaid calling cards (Attachment C). One is titled "Premier Penny" and the other is titled "Dollar Saver". The back of both cards stated "Services provided for 1ST American Telecom, Inc." 1-AT stated that it uses three network service providers; NaTel, Network Communications, and Justice Telecom. NaTel has indicated to staff that it is the network provider for the Premier Penny calling card.
- February 9, 2001 - Staff contacted 1-AT to determine the network provider for the Dollar Saver calling card. A company representative stated that MCI is the network provider.

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- February 22, 2001 - Staff sent a letter to MCI requesting information pertaining to the Dollar Saver calling card and whether MCI is the network provider.
- March 30, 2001 - MCI provided that the Dollar Saver calling card is not theirs. MCI is selling access to another carrier.
- April 12, 2001 - Staff received a call from Mr. Ladas of 1-AT. He explained that 1-AT is a wholesaler and does not require a certificate. He further stated that he would send staff a letter explaining his company's position.
- May 29, 2001 - To date, staff has not received any written correspondence from 1-AT.

The Florida Public Service Commission (FPSC) is vested with jurisdiction over these matters pursuant to Sections 364.183, 364.285, 364.335, and 364.337, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order 1ST American Telecom, Inc. to show cause why it should not be fined \$25,000 for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required?

RECOMMENDATION: Yes. The Commission should order 1-AT to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The company's response should contain specific allegations of fact and law. If 1-AT fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the fine shall be deemed assessed. If 1-AT pays the fine, it should be remitted to the State of Florida General Revenue Fund. If the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection. **(J. Fudge/D. Buys)**

STAFF ANALYSIS: Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, states:

A company shall not provide prepaid calling services without first obtaining a certificate of public convenience and necessity as a local exchange company, alternative local exchange company, or interexchange company.

Upon receiving a call from a distributor, complaining that 1-AT did not refund his money after he had returned unusable prepaid calling cards, staff proceeded to investigate 1-AT. To date, staff has determined the following:

- 1-AT is offering prepaid calling cards for sale to Florida consumers and distributors through its Internet web site <http://www.lamericantelecom.com>.
- 1-AT is offering "instant pin numbers" for access to prepaid calling card services on its Website. Currently, 1-AT's Website does not list any other service providers for the calling cards or pin numbers it solicits. To an

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end user, 1-AT appears to be the provider for the products it sells.

- 1-AT does not have a Certificate in its name (1ST American Telecom, Inc.) to provide prepaid calling card services in the State of Florida.
- 1-AT's Website indicates that the company does have and utilizes telecommunications and switching equipment.
- 1-AT personnel have indicated that it provides MCI service through its Dollar Saver calling card but does not appear to have a contractual relationship with MCI to distribute MCI's prepaid calling card services. Moreover, MCI has indicated to staff that they do not provide prepaid calling services through the access number printed on the back of the Dollar Saver card (1-888-412-4415).
- The printing on the back of the Dollar Saver calling card states that services are provided for 1ST American Telecom, Inc. However, 1-AT has not disclosed the network provider for the card.

Furthermore, in a page on 1-AT's Website (Attachment D), there is a list of the company's personnel. On that page, there are five images. One of the images shows two people sitting at a large work station with a large amount of computer and electronic equipment stacked on a shelf above the work table. Upon moving the computer screen cursor on top of that image, a caption associated with the image states, "1-AT's Information Technology Department oversees state-of-the-art telecommunications hardware and switching equipment." Notwithstanding, Mr. Ladas, has indicated that he believes that his company does not require a certificate. However, his company has not provided staff with the pertinent information to support his assertions.

Based on the chronological events outlined in the case background and the information posted on 1-AT's Website, staff believes that 1-AT may be providing telecommunications services in Florida without a certificate and that 1-AT's apparent violation of Rule 25-24.910, Florida Administrative Code, has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to

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violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as 1-AT's conduct at issue here, would meet the standard for a "willful violation."

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Accordingly, staff recommends that the Commission should order 1-AT to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$25,000 for apparent violation of Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. The company's response should contain specific allegations of fact and law. If 1-AT fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the fine shall be deemed assessed. If 1-AT pays the fine, it should be remitted to the State of Florida General Revenue Fund. If the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection.

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ISSUE 2: Should the Commission order 1-AT to show cause why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. The Commission should order 1-AT to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact and law. If 1-AT fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing waived, and the fine shall be deemed assessed. If 1-AT pays the fine, it should be remitted to the State of Florida General Revenue Fund. If the company fails to respond to the Order to Show Cause, and the fine is not paid within ten business days after the expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection. **(J. Fudge/D. Buys)**

STAFF ANALYSIS: Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Staff sent two certified letters to 1-AT, one on September 26, 2000, and again on November 20, 2000. On December 8, 2000, staff received a phone call from 1-AT in response to the certified letters. 1-AT indicated it would fill out the application for a certificate and submit it to the Commission. To date, staff has not received an application from 1-AT.

During two subsequent phone conversations on January 8, 2001, and again on April 12, 2001, 1-AT personnel indicated the company would provide staff with the appropriate information in response to staffs inquiries. To date, staff has not received any written correspondence from 1-AT.

Staff believes that 1-AT has had an adequate opportunity to respond to staff's inquiries, yet the company has failed to provide the necessary information. Therefore, staff believes that 1-AT's apparent violation of Rule 25-4.043, Florida Administrative Code,

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has been "willful" in the sense intended by Section 364.285, Florida Statutes. Furthermore, by Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364.

Accordingly, staff recommends that the Commission order 1-AT to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$10,000 for failure to provide the Commission access to information in accordance with Section 364.183(1), Florida Statutes, Access to Company Records. 1-AT's response should contain specific allegations of fact and law. If 1-AT fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived, and the fine should be deemed assessed. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund. If the fine is not received within ten business days after expiration of the show cause response period, it should be forwarded to the Office of the Comptroller for collection.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendations in Issues 1 and 2 are approved, 1-AT will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amounts proposed. If 1-AT timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceedings. If 1-AT fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing waived, and the fines shall be deemed assessed. If the company fails to respond to the Order to Show Cause and the fines are not paid within ten business days after the expiration of the show cause response period, they should be forwarded to the Office of the Comptroller for collection and this docket may be closed administratively. **(J. Fudge)**

STAFF ANALYSIS: If staff's recommendations in Issues 1 and 2 are approved, 1-AT will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amounts proposed. If 1-AT timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceedings. If 1-AT fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period, the facts shall be deemed admitted, the right to a hearing waived, and the fines shall be deemed assessed. If the company fails to respond to the Order to Show Cause and the fines are not paid within ten business days after the expiration of the show cause response period, they should be forwarded to the Office of the Comptroller for collection and this docket may be closed administratively.

STATE OF FLORIDA

Commissioners:
J. TERRY DEASON, CHAIRMAN
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ



DIVISION OF COMPETITIVE SERVICES
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

September 26, 2000

CERTIFIED

Mr. Nicholas Ladas, President
1ST American Telecom, Inc.
1821 NE 146th Street
Miami, FL 33181-1423

Re: Certification requirement in the State of Florida.

Dear Mr. Ladas:

It has come to my attention that your company, 1ST American Telecom, Inc. (1AT), may be providing pre-paid calling services to distributors and end users in the State of Florida. According to Florida Public Service Commission Rules, a company providing PPCS in the State of Florida may not do so without first obtaining a certificate. Rule 25-24.910, Florida Administrative Code, Certificate of Public Convenience and Necessity Required, states in part:

"A company shall not provide Prepaid Calling Services (PPCS) without first obtaining a certificate of public convenience and necessity as a local exchange company, alternative local exchange company, or interexchange company."


A copy of the rules pertaining to the provision of PPCS and an application package for an Interexchange Certificate of Public Convenience and Necessity have been enclosed for your review. If you believe that 1AT is exempt from certification, please provide me with the appropriate justification; citing specific facts, rules, and statutes that support your argument.

Please provide a written response to the Public Service Commission by October 22, 2000, by either; (1) completing the application and submitting it to the address indicated in the application, or (2) sending a letter to me citing the reasons 1AT is not required to obtain a certificate.

Nicholas Ladas, President
Page 2
September 26, 2000

Also, please send me copies (front and back) of the pre-paid calling cards IAT sells, and provide me with the names of the network service providers used for each card. Should you have any questions or concerns, please call me at (850) 413-6536.

Sincerely,



Dale R. Buys
Regulatory Analyst
Bureau of Service Quality

Cats # 337593C

DRB/drb

Enclosures (2):

1. Copy of Rules 25-24.900-940, Florida Administrative Code.
2. IXC Certificate Application Package.

STATE OF FLORIDA

Commissioners:
J. TERRY DEASON, CHAIRMAN
E. LEON JACOBS, JR.
LILA A. JABER
BRAULIO L. BAEZ



DIVISION OF COMPETITIVE SERVICES
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

November 20, 2000

CERTIFIED

Mr. Nicholas Ladas, President
1ST American Telecom, Inc.
1821 NE 146th Street
Miami, FL 33181-1423

Re: Certification requirement in the State of Florida.

Dear Mr. Ladas:

On September 26, 2000, I sent a certified letter to you inquiring about 1ST American Telecom, Inc.'s position on obtaining a Certificate of Public Convenience and Necessity from the Florida Public Service Commission. The certified letter receipt (green card) was signed by the receiving party on October 2, 2000. As of November 20, 2000, I have not received a reply. In addition, I have attempted to call you on the days of November 3, 6, 8, and 12. On November 3 and 8, the receptionist informed me that you were not in. On November 6 and 12, the receptionist transferred me to your extension, but I was unable to leave a message because your voice mail box was full.

Mr. Ladas, I would like to give you another opportunity to respond to my previous inquiry and explain your position on the issues addressed in that letter. I reiterate that I believe 1ST American Telecom, Inc. is providing pre-paid calling services to distributors and end users in the State of Florida without a certificate. If I am mistaken, please explain why 1ST American Telecom, Inc. does not require a certificate to provide those services. I am enclosing a copy of the first letter I sent to you on September 26, 2000, addressing the aforementioned issues.

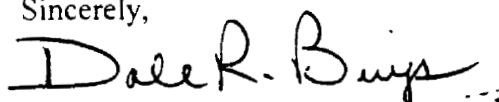
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Attachment B

Nicholas Ladas, President
Page 2
November 20, 2000

Please provide me with a written response to this second inquiry by December 8, 2000.
Should you have any questions, please call me at (850) 413-6536.

Sincerely,

A handwritten signature in black ink that reads "Dale R. Buys". The signature is written in a cursive style with a horizontal line under the first name.

Dale R. Buys
Regulatory Analyst
Bureau of Service Quality

Cats # 337593C

Enclosure: Copy of letter dated September 26, 2000.

Dale Buys

Enter Pin Number

PIN: 337 551 3235 \$5

2. Marque el Numero F

Dial 1-888-386-2835 for Customer service
To call a number in the U.S., Canada, or the Caribbean press 1, the area code and the telephone number.
To make an international call, press 011, the country code, city code, and telephone number. To make another call press * and don't hang up.

Marque 1-877-227-6180 para servicio al cliente
Para llamar domesticas marque 1 codigo del area y e numero telefonico.
Para llamar internacional, marque el 011, codigo del el codigo de la ciudad y el numero de telefono.
Para hacer otra llamada no cuelgue, presione el *
Inventory control number/Codigo

Premier Penny

Lot # PP1 18298361

Read and agree to terms before purchase. Non-refundable. Non-rechargeable. Domestic calls \$.45 connection. International calls \$1-\$3 connection. No monthly fee. All calls billed in 1 minute increments. All calls made from public pay phones will be subject to a \$.49 additional fee for mandated FCC "dial-around" charge. Additional user fees will apply. Rates & surcharges will change without notice. Services provided for 1st American Telecom, Inc. Card expires 6 months after 1st use. Stated minutes less fees=actual talk minutes. Unusable funds are forfeited.

Previo adquisición, leer y aceptar condiciones. Servicio proporcionado por 1st American Telecom, Inc. Conexión por llamadas domesticas \$.45. Por llamada internacional \$1-\$3. Todas las llamadas están en incrementos de 1 minuto. Llamadas en teléfonos públicos tienen un cargo de \$.49 adicional según regulación de FCC. No se aceptan devoluciones. Tarjeta no es recargable. Tarifas y otros cargos sujetos a cambio sin previo aviso. Esta tarjeta expira 180 días después de su primer uso. Minutos anunciados menos cargos= total de minutos hablados. Crédito no usado será perdido.

1. Dial 1-888-442-4415

1. Marque 1-888-443-448

2. Enter PIN number

2. Marque el numero PIN



To call a number in the U.S., Canada, or the Caribbean press 1, the area code and the telephone number.
To make an international call, press 011, the country code, city code, and telephone number.
To make another call press * and don't hang up.
Dial 1-800-463-6175 for customer service.

Para llamar domesticas marque 1 codigo del area y el numero telefonico.
Para llamar internacional, marque el 011, codigo del pais, el codigo de la ciudad y el numero telefonico.
Para hacer otra llamada no cuelgue, presione el *
Marque 1-800-463-6175 service al cliente.

Inventory control number/Codigo

Dollar Saver

4943 / 60001

No connection charges. All calls billed in 1 minute increments. All calls made from public pay phones may be subject to a \$.49 additional fee for mandated FCC "dial-around" charge. Monthly service fee of \$.49 and additional taxes may apply. Non-refundable. Rates & surcharges may change without notice. Services provided for 1st American Telecom, Inc. Card expires 90 days after last use.

Sin conexiones. Todas las llamadas facturan en incrementos de 1 minuto. Llamadas de telefonos publicos pueden tener una sobre carga adicional de \$.49 por cada llamada. Cobro de servicio mensual \$.49. No reembolso. Cargo de acceso y precio sujetos a cambio sin previo aviso. Esta tarjeta expira 90 dias despues del ultimo uso.

Premier Penny

25¢ \$5

NO CONNECTION FEE

NO SURCHARGES

WASHINGTON, D.C. 10

10

PREPAID PHONE CARD

DOLLAR SAVER

5

5



Become a prepaid phone card:

Distributor or Retailer

Products Press Release Instant Pins Solutions About 1AT

Consumers speak for us... Our products lead the way

Profile Mission 1AT Goals Rates Charts Affiliations Contact Us E-Mail 1AT

Home ->

Order right now!



Instant Pins

On-Line



Company Profile

Mission Statement

1AT Goals

Solutions On-Line

Employment Opportunities

E-Mail 1AT

Open Forum

Awards

Upcoming Trade Shows

Press Releases

*Rates Chart

Personnel

International Call Back



1AT Personnel

| | | |
|--|--|---------------------|
| | President, Chief Executive Officer | Dr. Nicholas Ladas |
| | Vice President Sales and Marketing | Rick Nye |
| | Vice President & Chief Financial Officer | Robert Allman |
| | Director, Marketing | David Goldfarb |
| | Director, Information Technology | Katherine Balliache |
| | Director, Accounting Services | Andrea Alvarado |
| | Manager, Activations | Juli Franco |
| | Manager, Invoicing | Jessica Nevins |
| | Director, Human Resources | Jennifer Heath |
| | Director, MIS | Javier Valencia |
| | Manager, Data Entry | Teresa Cavanaugh |
| | Manager, Shipping | Carlos Hernandez |
| | Director, Graphic Design | David Alvarado |
| | Coordinator, Internet/E-Commerce | Brenda Goldman |
| | National Account Executive | Dawn Joseph |
| | National Account Executive | Harvey Grossman |
| | Manager, Warehouse | John Williams |
| | 1AT Personnel Assistant, Shipping | Frankie Cortez |
| | Sales Administrator | Nurdan Yildirim |
| | Web Site Designers | GraphixReason, Inc. |

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 Web Site Design By GraphixReason, Inc.