

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation of NORTH) DOCKET NO. 930416-TC
AMERICAN INTELECOM, INC. for) ORDER NO. PSC-94-1206-FOF-TC
incorrect billing of collect) ISSUED: October 3, 1994
calls from various prisons.)
_____)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER REJECTING SETTLEMENT OFFER

BY THE COMMISSION:

I. BACKGROUND

By Order No. PSC-93-10830-FOF-TC, issued July 26, 1993, this Commission required North American Intelcom, Inc. (NAI or the Company) to show cause in writing, why it should not be fined for charging in excess of the rate cap for pay telephone service provided at confinement facilities, as established by Order No. 24101. We also required NAI to refund all monies incorrectly collected from the ratepayers who were billed for collect telephone calls. The refund and collection costs were estimated at \$65,000, with costs and refunds approximately equal.

On August 16, 1993, NAI responded to the Order to Show Cause, requesting a hearing on the issues of fact, policy, and law. The company also requested that the prehearing officer convene an early prehearing conference for the purpose of facilitating the resolution of this dispute without a formal hearing and unnecessary adversarial process. In November of 1993, NAI proposed a settlement consisting of an offer to refund \$65,000 and pay a \$2,000 fine. The hearings scheduled to consider the matters raised by the Order to Show Cause were continued to allow time to consider the proposed settlement offer. Subsequent to the continuation of the hearings, further tests of NAI's service

DOCUMENT NUMBER-DATE

10048 OCT-3

FPSC-RECORDS/REPORTING

indicated that additional violations of the Commission's rules had apparently occurred. In response, NAI has modified its initial settlement offer. Our consideration of the modified settlement offer is set forth below.

II. SETTLEMENT OFFER

The modified settlement offer consists of the following: 1) refund a portion of its overcharges amounting to \$250,000 by way of a reduced rate for future calls from the confinement facilities, 2) make a cash refund payment of any remaining monies not refunded if NAI is not awarded a contract with DOC after February 1995 and 3) no fine to be imposed.

III. PENDING VIOLATIONS

Since the original Order to Show Cause was issued it appears that certain violations are continuing and additional violations have come to light. Our continuing investigation indicates that NAI is continuing to mistime and overcharge for calls, and is improperly using traffic concentrators.

This proceeding was initiated due to complaints regarding alleged overcharges by NAI. NAI began serving confinement facilities in Florida in September 1991. We received the first complaint against this company in October 1991. The flow of complaints continues unabated. Since the initial settlement offer was received, the Commission's Division of Consumer Affairs has received additional complaints against this company. We have received several additional complaints from Ms. Jeri Friedman. Ms. Friedman was a primary complainant when this matter was first brought before us. In addition, the Florida Department of Corrections (FDOC) has provided us with copies of "inmate request" forms which are the documents used by an inmate to voice concerns to the staff of the confinement facility. There were approximately 86 inmate phone related complaints/inquiries for the period from October 1, 1993, through April 15, 1994. Because of the additional complaints, we continued our investigation, leading to discovery of additional apparent overcharges.

On February 14 and 15, 1994, an engineer from our technical staff placed three test calls from New River Correctional Institution (NRCI). One call was made on February 14, 1994, and no error was found in billing or timing. Two calls were made on

February 15, 1994, and each call was overtimed by 1 minute. This mistiming of calls is of grave concern to us because the company has provided assurances many times that all programming and equipment errors were corrected.

Members of our staff met with NAI and representatives from FDOC on April 7, 1994, to discuss these test calls as well as the complaints that had been received. During this meeting it was discovered that NAI has been incorrectly timing calls. It appears that the company routes every call to its validation database in Texas and is billing the customer for the time it takes for the call to be validated prior to positive acceptance. Depending on the length of time it takes for the routing of the call and the validation process, it could add a few seconds resulting in an additional minute being added to the call duration. This is an apparent violation of Rule 25-24.630(f), Florida Administrative Code, Rate and Billing Requirement, which states that an operator service provider shall charge only for conversation time as rounded according to company tariffs. Conversation time is defined as the time during which two way communication is possible.

In response to a customer complaint dated May 2, 1994, NAI explained to the complainant that the additional time for validation of the call is added to the call as chargeable time. We note that this response is dated almost a month after staff met with NAI and discussed this issue at great length. It appears that the company did not correct this timing problem even after it was brought to the Company's attention by our staff.

In addition to the mistiming problem, it was discovered during the meeting with NAI and confirmed with written data requests that NAI is using concentrators at the facilities it serves. These devices operate much like a Private Branch Exchange (PBX) and allow the operator to utilize fewer network access lines than there are station lines connected to the concentrator. When a concentrator is used to serve pay phones, there are insufficient lines to complete all calls if each pay phone is in use. The use of the concentrator could be the cause of the numerous blocked call attempts reported to the Commission as well as to prison officials by the inmates.

The information provided to us indicates that at the 18 facilities served by NAI there is a total of 355 pay telephone instruments and 144 pay telephone access lines. This is an apparent violation of Rule 25-24.515(9), Florida Administrative Code, states that each telephone station must be connected as provided in the pay telephone access tariff offered by the local

exchange company. It is also an apparent violation of Order 14529 issued July 1, 1985. In this Order the Commission established the policy of one pay phone per access line.

IV. CONCLUSION

Upon consideration of the forgoing, we find that NAI's offer of settlement should be rejected. Several factors weigh in favor of rejection. NAI has, by its own admission, overcharged its customers \$394,318, yet it offers to refund only \$250,000. We note that in support of its offer to refund less than the over charged amount, NAI argues that it should not be ordered to refund the entire amount because \$144,000 has been paid to the Department of Corrections (DOC) as commission payments. We find this unpersuasive. NAI collected the amount of the overcharges. The Company is responsible for overcharging consumers and should be held responsible for refunding the entire \$394,318. The offer also fails to include any payment of interest on the refund. In addition, we are concerned that this company may not be awarded a contract from DOC after February of 1995 which is the present termination date of the contract with NAI. We note that NAI has offered to make payment of any monies not refunded at the direction of the Commission if NAI is not awarded an additional contract from DOC; however, NAI may not have sufficient Florida business to effect the refund.

NAI's proposal that no fine should be imposed seemingly ignores the fact that apparent mistiming and overcharging continue to occur as well as the fact that there are additional rule violations occurring. NAI's solution to overcharges and other apparent rule violations is simply to refund only a portion of the amount overcharged. We find this unacceptable. We note that NAI argues here that the use of concentrators is not precluded and cites to its pending Petition for Declaratory Statement in Docket No. 940497-TC as a defense. Again we are unpersuaded, the use of traffic concentrators is at issue in this case. The declaratory statement, if one is issued, may resolve the question but the matter is still at issue here.

In addition to the above, the Commission continues to receive complaints from consumers because NAI's system no longer allows the caller to be identified before a decision to accept the collect call is made. This was previously allowed by the use of a "voice window" by which the called party could hear the voice of the calling party and thereby determine whether to accept the call. NAI deleted the voice window at the request of FDOC. We have suggested a solution to address both FDOC's and our concerns;

ORDER NO. PSC-94-1206-FOF-TC
DOCKET NO. 930416-TC
PAGE 5

however, NAI has not yet acted on this suggestion. It appears that this issue should also be resolved in conjunction with any resolution of this case.

For the reasons discussed above, the offer of settlement proposed by NAI is rejected. This matter shall proceed to hearing.

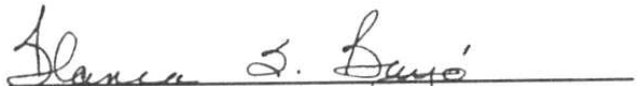
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the offer of settlement proposed by North American Intelcom, Inc. is rejected as set forth in the body of this Order. It is further

ORDERED that this matter shall proceed to hearing. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 3rd day of October, 1994.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

TWH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

ORDER NO. PSC-94-1206-FOF-TC
DOCKET NO. 930416-TC
PAGE 6

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.