

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against All American Telephone, Inc. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

DOCKET NO. 971493-TI
ORDER NO. PSC-98-1086-FOF-TI
ISSUED: August 11, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER REJECTING SETTLEMENT OFFER
AND
ORDER GRANTING MOTIONS FOR EXTENSION
OF TIME TO RESPOND TO ORDER TO SHOW CAUSE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding the settlement offered by All American Telephone, Inc. is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

All American Telephone, Inc. (All American), Certificate Number 4790, is a provider of interexchange telecommunications service and was certificated on February 18, 1997. All American has reported gross operating revenues of \$6,161,002.94 in its Regulatory Assessment Fee Return for the period January 1, 1997, through December 31, 1997. As a provider of interexchange telecommunications service in Florida, All American is subject to our rules and regulations.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

From April 29, 1997, until January 20, 1998, our Division of Consumer Affairs has closed 37 complaints against All American as unauthorized carrier change (slamming) infractions in apparent violation of Rule 25-4.118, Florida Administrative Code. Other complaints have been received by the Division of Consumer Affairs and are pending a response from All American.

On February 10, 1998, we issued Order No. PSC-98-0268-FOF-TI, requiring All American to show cause why it should not have certificate number 4790 canceled or be fined \$370,000 for 37 apparent violations of Rule 25-4.118, Florida Administrative Code. In response to this order, All American filed an offer of settlement on June 19, 1998 (attached and incorporated herein as Attachment A).

II. SETTLEMENT OFFER

In its settlement offer, All American agreed to do the following:

- Immediately discontinue all sales and marketing activities in Florida which involve the use of sweepstakes or contest promotions, and
- Make a voluntary contribution to the General Revenue Fund in the amount of \$32,400. All American will remit \$10,800 at the time that the offer is accepted and the show cause proceeding terminated. It would then make monthly payments in the amount of \$3,600 for the next six months.

All American also stated that its offer should be considered in settlement of all complaints against All American based upon conduct occurring through the date of settlement.

All American's proposal to cease all sales and marketing activities in Florida that pertain to sweepstakes or contest promotions is appropriate. This will eliminate the current source of All American's complaints. We are, however, concerned about All American's proposal that this offer would be in settlement of all complaints against All American based upon All American's conduct through the date of the settlement offer. We have identified

apparent slamming violations from April 29, 1997 through January 20, 1998, and our Order to Show Cause, Order No. PSC-98-0268-FOF-TI, was based on this time frame. In addition, we find that All American's monetary settlement proposal is insufficient. All American's proposal simply does not adequately address the harm to the public interest that All American's apparent slamming violations have caused. Furthermore, we have seen All American's complaints continue to increase since our Order to Show Cause was issued in February. As of the July 9, 1998, filing of Commission staff's recommendation, our Division of Consumer Affairs had received 331 complaints against All American regarding unauthorized carrier changes.

III. EXTENSION OF TIME TO RESPOND

Along with its offer of settlement, All American filed a Motion for Extension of Time to Respond to Show Cause Order on February 26, 1998. By that Motion, All American requested a 15-day extension of time to respond to the Order to Show Cause because it was engaged in settlement discussions with our staff.

On March 10, 1998, All American filed a Motion for Further Extension of Time to Respond to Order to Show Cause (Second Motion). In the Second Motion, All American asked that we allow it an additional 20 days to respond to the Order to Show Cause from the date of our decision on its settlement proposal, if necessary. All American indicated that it has filed the Motions in order to facilitate its pursuit of a settlement of the apparent slamming violations. We find these motions are appropriate in view of All American's good faith efforts to reach a settlement. Thus, we hereby grant All American's Motions for Extension of Time. All American shall respond to Order No. PSC-98-0268-FOF-TI within 20 days from the issuance of this Order.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the settlement proposal offered by All American Telephone, Inc. is rejected. It is further

ORDER NO. PSC-98-1086-FOF-TI
DOCKET NO. 971493-TI
PAGE 4

ORDERED that the provisions of this Order regarding the settlement proposed by All American Telephone, Inc. are issued as proposed agency action, and shall become final and effective unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that the Motions for Extension of Time to Respond to Order No. PSC-98-0268-FOF-TI filed by All American Telephone, Inc. are granted. It is further

ORDERED that All American Telephone, Inc. shall respond to Order No. PSC-98-0268-FOF-TI within 20 days from the issuance of this Order. It is further

ORDERED that failure to respond to Order No. PSC-98-0268-FOF-TI by the date set forth herein shall constitute an admission of the violations described in the body of Order No. PSC-98-0268-FOF-TI, and waiver of the right to a hearing. It is further

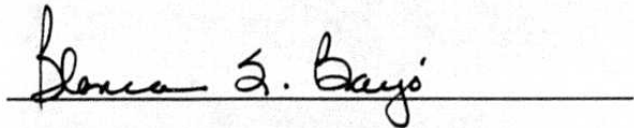
ORDERED that if All American Telephone, Inc. does not timely respond to Order No. PSC-98-0268-FOF-TI or to our proposed agency action herein rejecting the settlement offer, the fine of \$370,000 shall be deemed assessed. It is further

ORDERED that if All American Telephone, Inc. fails to respond to this Order or to the Order to Show Cause, and does not pay the fine within five (5) business days after the expiration of the response period, its certificate shall be canceled. It is further

ORDERED that the Commission shall forward the fine payment upon receipt to the Office of the Comptroller for deposit in the Florida General Revenue fund, pursuant to Section 364.285, Florida Statutes.

ORDER NO. PSC-98-1086-FOF-TI
DOCKET NO. 971493-TI
PAGE 5

By ORDER of the Florida Public Service Commission this 11th
Day of August, 1998.

A handwritten signature in cursive script, reading "Blanca S. Bayó", is written over a solid horizontal line.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

BK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

The action proposed herein regarding rejecting of All American Telephone, Inc.'s offer of settlement is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 1, 1998.

In the absence of such a petition, the portions of this Order relating to the settlement offer shall become effective on the day subsequent to the above date.

ORDER NO. PSC-98-1086-FOF-TI
DOCKET NO. 971493-TI
PAGE 6

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the portions of this Order pertaining to All American Telephone, Inc.'s Motions for Extension of Time to Respond, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ORDER NO. PSC-98-1086-FOF-TI
DOCKET NO. 971493-TI
PAGE 7

ATTACHMENT A

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June 19, 1998

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REGINA FAMIGLIETTI PACE
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VIA FAX AND OVERNIGHT MAIL

Charles Pelligrini, Esq.
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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LEGAL DIV

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Re: Docket No. 971493-TI - In re Initiation of show cause proceedings against
All American Telephone, Inc. for violations of Rule 25-4.118, F.A.C.
Interexchange Carrier Selection

Dear Mr. Pelligrini:

On March 9, 1998, I sent to your office a letter setting forth a comprehensive offer to settle the above-captioned show cause proceeding which had been initiated against my client, All American Telephone, Inc. As you will recall, that proposal consisted of several important changes to All American's sales, marketing, and customer verification practices, as well as an offer to pay a voluntary contribution to the State Treasury in the amount of \$18,000. The payment amount proposed was based on a payment of \$500 per closed violation for each of the 37 violations asserted in the Show Cause Order to have been closed by the Commission's Consumer Affairs Division, less the one "violation" which involved the innocent and unintentional transposition of two digits of a customer's telephone number resulting in the wrong customer having its service switched.

Based upon several conversations between undersigned counsel and members of the Commission staff, and following consultation with the management of All American, I have been authorized to submit the following revised settlement offer:

1. Voluntary Payment - All American will make a voluntary payment in the amount of \$32,400 to the State Treasury. That amount represents \$900 per closed violation for each of the 36 "closed" complaints mentioned above. That is an increase of eighty percent per violation over the previous offer. All American proposes to make an initial payment of \$10,800 at the time that the offer is accepted and

Charles Pelligrini, Esq.
June 19, 1998
Page 2

the show cause proceeding terminated. It would then make monthly payments in the amount of \$3,600 for the next six months.

2. Elimination of Sweepstakes - All American will immediately discontinue all sales and marketing activities in Florida which involve the use of sweepstakes or contest promotions. No contests will be conducted by All American or any of its agents, and no prizes will be awarded to randomly-selected persons. While All American may offer inducements such as free minutes of use or discounts to all customers signing up for its service, it will totally exit the sweepstakes aspect of the business.

This offer, if accepted, would be in settlement of all complaints against All American based upon conduct occurring through the date of settlement. All American believes that this revised settlement offer is fair and equitable to the Commission and to Florida consumers, and it is hopeful that the Commission will find this offer to be acceptable. In considering the size of the voluntary contribution proposed, please note that All American reported intrastate revenues during 1997 of only \$568,650 -- an amount substantially below that reported by any other carrier which has had an offer to settle a slamming-related show cause order approved by the Commission. Moreover, by committing to discontinue all use of sweepstakes promotions in its marketing, All American is attempting to respond to articulated expressions of Commission and Staff concern about such marketing methods.

On behalf of All American, it is my hope that Staff and ultimately the Commission will find this offer to be acceptable and that this proceeding can be terminated by agreement between the parties. If there are any questions regarding this offer, please communicate directly with undersigned counsel for All American.

Sincerely,



Mitchell F. Brecher
Counsel for All American Telephone, Inc.