

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-98-1653-PCO-TI
ISSUED: December 8, 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.

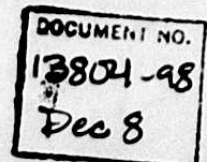
ORDER REJECTING SETTLEMENT OFFER
AND
ORDER GRANTING SECOND MOTION FOR EXTENSION
OF TIME TO NEGOTIATE SETTLEMENT

I. BACKGROUND

All American Telephone, Inc. (All American), holder of 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 the rules and regulations of this Commission.

From April 29, 1997, to January 20, 1998, the Commission's 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, the Commission 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. On July 21, 1998, the Commission voted to deny the settlement offer and continue settlement negotiations. On August 24, 1998, All American filed a Second Motion for Further Extension of Time To Respond to Order To Show Cause. As the result of many meetings with our staff, All American filed a revised offer of settlement on October 2, 1998. (Attached and incorporated herein as Attachment A).

II. SETTLEMENT OFFER

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

1. All American will agree to suspend marketing of intrastate telecommunications services in the state of Florida for a period not to exceed three years.
2. Following the suspension period, All American agrees not to use sweepstakes as a method of marketing telecommunications service.
3. In the event All American uses promotional or inducement language following the suspension period, it will be confined to physically separate or separable documents.
4. Following the suspension period, All American will revise its agents agreement and require all agents to execute it as a precondition to representing All American in Florida. The revised agent agreement includes conditions to only use LOAs specifically approved by All American. All American will not compensate agents for orders rejected by All American.
5. Following the suspension period, All American will send verification letters to randomly-selected persons whose names appear on LOAs obtained by All American. All American will then wait two weeks before processing the PIC change request. For the first year, All American will verify fifty percent of the LOAs. Following that period, All American will verify 25% for six months.
6. All American will make a voluntary contribution to the General Revenue Fund in the amount of \$50,000. All American will remit \$5,000 in ten monthly installments commencing the first month following Commission approval of the agreement.

7. All American's settlement proposal would cover all outstanding complaints up to the date of the Commission's order approving the settlement.

All American's proposal to cease marketing activities in Florida for a period of three years is appropriate. This will allow All American's new management to review its past marketing techniques and implement changes to reduce consumer complaints. We support All American's tougher stance with its agents. We note this will put its agents on notice that LOAs must be obtained in compliance with the rules of the Florida Public Service Commission.

All American's offer to send verification letters to randomly selected persons whose name appears on the LOA is inappropriate. If the name on the LOA is not that of the person at that address, the letter will most likely be thrown away. In addition, if the person on the LOA did not recognize the company name on the envelope, they will most likely discard the letter without reading it.

Additionally, we cannot support All American's proposal that this offer would be in settlement of all complaints against All American based upon conduct occurring through the date of our order approving the settlement. Our show cause order specified complaints closed by Consumer Affairs as apparent slamming violations from April 29, 1997 through January 20, 1998. The proposed penalties in the order were based on this time frame. Since January 20, 1998, our Division of Consumer Affairs has received 326 complaints about All American that we have not fully reviewed. Therefore, we cannot accept All American's monetary settlement proposal for all outstanding slamming complaints.

III. SECOND MOTION FOR EXTENSION OF TIME TO NEGOTIATE

All American filed a Second Motion for Extension of Time to Negotiate Settlement on August 24, 1998. By that Motion, All American requested a 20-day extension of time to further negotiate a settlement with our staff.

All American indicated that it has filed the Motion for Extension of Time in order to facilitate its pursuit of a settlement of the apparent slamming violations. We find this motion is appropriate in view of All American's good faith efforts to reach a settlement. Thus, we hereby grant All American's Motion

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for Extension of Time. All American shall respond to Order No. PSC-98-0268-FOF-TI within 21 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

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

ORDERED that All American Telephone, Inc. shall respond to Order No. PSC-98-0268-FOF-TI within 21 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 does not timely respond to Order No. PSC-98-0268-FOF-TI, the fine of \$370,000 shall be deemed assessed. It is further

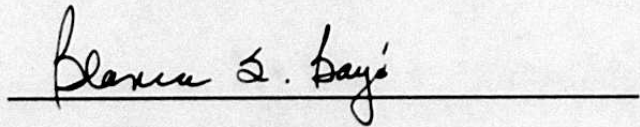
ORDERED that if All American Telephone, Inc. fails to respond to the Order to Show Cause, and does not pay the fine within five (5) business days after the expiration of the response period, its certificate shall be canceled. It is further

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. It is further

ORDERED that this docket shall remain open pending resolution of the show cause proceeding.

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By ORDER of the Florida Public Service Commission this 8th
day of December, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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.

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.

Any party adversely affected by this order, 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,

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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.

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October 2, 1998

VIA FAX AND REGULAR MAIL

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

Re: Docket No. 971493-TI - 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.

Dear Ms. Brown:

Pursuant to our telephone discussion of September 25, 1998, this letter is to memorialize the terms of the settlement in the above-captioned matter. The settlement terms discussed reflect the written proposal submitted by All American Telephone, Inc. to you on July 24, 1998, as revised and clarified based upon discussions which have occurred between you, Kelly Biegalsky of the Communications Division, and myself. (The settlement would resolve all complaints against All American by the Commission through the date of Commission approval of the settlement.) The material terms of the agreement would include the following:

1. **Voluntary Contribution** - All American will make a voluntary contribution in the amount of fifty thousand dollars (\$50,000.00) to the State Treasury. The contribution would be payable in ten monthly installments of five thousand dollars (\$5,000.00) commencing the first month following Commission approval of this agreement;
2. **Voluntary Suspension of Marketing** - All American would voluntarily agree to suspend marketing of intrastate telecommunications services in the state of Florida for a period not to exceed three years. The three year suspension of marketing would commence immediately upon Commission approval of the agreement. During this voluntary suspension period, All American would continue to provide service to its existing customers;

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LEGAL DIVISION

Martha Brown, Esq.
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3. **Elimination of Sweepstakes** - Following the voluntary suspension period, All American agrees not to use the sweepstakes method of marketing telecommunications services;
4. **Changes to Sales, Marketing and Verification Practices** - Following the voluntary suspension period, All American agrees to implement the changes to its sales, marketing and verification practices described in my letter to you dated July 24, 1998.

As with other settlement agreements, there would be no admission of unlawful conduct by any party. By agreeing to make a substantial contribution to the State Treasury, to suspend marketing of service, and, following that suspension, to implement sales, marketing and verification reforms, All American believes that this agreement would serve the public interest. While All American is disappointed that it will not be competing in the Florida telecommunications marketplace for several years, it looks forward to re-entering the market and operating in accordance with the reforms which it has committed to implement. If you or your colleagues on the Commission staff have questions about the terms of this agreement, please communicate directly with undersigned counsel for All American Telephone.

Sincerely,



Mitchell F. Brecher

cc: Ms. Kelly Biegalsky