

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Citizens of State of Florida for investigation of Talk America Inc. and its affiliate, The Other Phone Company, Inc. d/b/a Access One Communications, for willful violation of Rule 25-4.118, F.A.C.

DOCKET NO. 010409-TP

In re: Investigation of possible violation of Commission Rules 25-4.118 and 25-24.110, F.A.C., or Chapter 364, F.S., by The Other Phone Company, Inc. d/b/a Access One Communications, holder of ALEC Certificate No. 4099, and Talk America Inc, holder of ALEC Certificate No. 4692.

DOCKET NO. 010564-TX  
ORDER NO. PSC-01-2107-SC-TP  
ISSUED: October 23, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman  
J. TERRY DEASON  
LILA A. JABER  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI

ORDER TO SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

Tel-Save, Inc. d/b/a Network Services d/b/a The Phone Company (The Phone Company) obtained Florida Public Service Commission Interexchange (IXC) Telecommunications Certificate No. 2985 on June

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29, 1992, and Alternative Local Exchange Company (ALEC) Certificate No. 4692 on August 29, 1996. After receiving its certificates, on April 9, 1998, we issued Order No. PSC-98-0495-AS-TI, in Docket No. 971218-TI, in which we accepted a \$5,000 settlement offer from The Phone Company to resolve the apparent violation of Rule 25-4.043, Florida Administrative Code. In that docket, we had charged the company with apparent failure to provide our staff with requested billing records following a service quality evaluation. We also noted that our Division of Consumer Affairs (CAF) had received 124 customer complaints between January 1, 1995, and September 30, 1997. Eighty-eight of these complaints were closed as apparent violations, 77 of which were apparent slamming infractions.

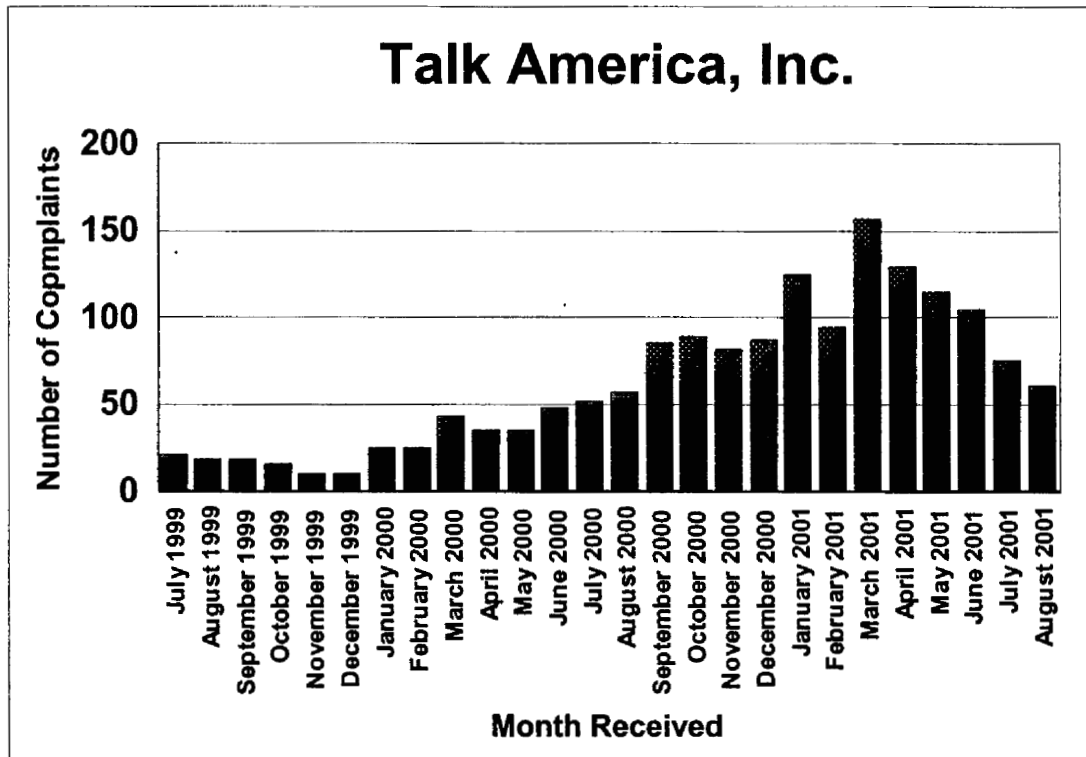
Since The Phone Company acquired its first certificates, the company has changed its name twice and acquired affiliates. We acknowledged the company's name change for IXC Certificate No. 2985 to Talk.com Holding Corp. d/b/a Network Services d/b/a The Phone Company (Talk.com) by Order No. PSC-99-2049-FOF-TP, issued October 20, 1999, in Docket No. 991389-TP. We also acknowledged the company's name change on ALEC Certificate No. 4692 to Talk.com by Order No. PSC-00-1097-FOF-TX, issued June 6, 2000, in Docket No. 000438-TX. We approved the transfer of ownership and control of The Other Phone Company, Inc. d/b/a Access One Communications, IXC Certificate No. 4100 and ALEC Certificate No. 4099, to Talk.com by Order No. PSC-00-1245-PAA-TP, which became final and effective by Consummating Order No. PSC-00-1428-CO-TP, issued August 3, 2000, in Docket No. 000452-TP. By Order No. PSC-01-1306-FOF-TP, issued June 15, 2001, in Docket No. 010709-TP, we acknowledged the request for name change on IXC Certificate No. 2985 and ALEC Certificate No. 4692 from Talk.com Holding Corp. d/b/a Network Services d/b/a The Phone Company to Talk America, Inc. (Talk America).

On April 6, 2001, the Office of the Public Counsel (OPC) filed a petition on behalf of the Citizens of the State of Florida requesting an investigation of Talk.com, IXC Certificate No. 2985, and its affiliate, The Other Phone Company, Inc., IXC Certificate No. 4100, for willful violation of Rule 25-4.118, Florida Administrative Code, and Docket No. 010409-TP was established. On April 20, 2001, our staff opened Docket No. 010564-TX to investigate possible violations of Rule 25-4.118, Florida Administrative Code, and Chapter 364, Florida Statutes, by Talk.com, ALEC Certificate No. 4692, and its affiliate, The Other

Phone Company, Inc., ALEC Certificate No. 4099. These dockets were consolidated at the company's request on June 21, 2001, by Order No. PSC-01-1361-PCO-TX. In these consolidated dockets, we will address the apparent violations received by us between July 1, 1999, and May 31, 2001, against the four certificates held by Talk.com, and its affiliate, The Other Phone Company, Inc. Talk America Inc., formerly known as Talk.com Holding Corp. d/b/a Network Services d/b/a The Phone Company, and its affiliate, The Other Phone Company d/b/a Access One Communications, shall hereinafter be collectively referred to as Talk America or the company.

On May 8, 2001, at a meeting between Commission staff, OPC, and Talk America, our staff informed Talk America that it would review all complaints against the company and its affiliate received by us between January 1, 1999, and May 31, 2001, including those that were closed by CAF as apparent rule violations or non-infractions. Our staff requested that the company provide an analysis of these consumer complaints, which Talk America filed on June 4, 2001. The company concluded that most of the complaints were from customers who experienced problems prior to November of 2000. Talk America further concluded that the problems arose from its entry into the provisioning of ALEC telephone services through its newly acquired affiliate, The Other Phone Company, Inc.

On June 22, 2001, our staff completed its analysis of the complaints received by us from July 1, 1999, through May 31, 2001. This analysis revealed a significant increase in complaints against the company since January of 2000. As the graph below shows, while the number of complaints filed against Talk America has decreased since April of 2001, we still continue to receive a large number of complaints against the company. Of the 1,381 complaints we received during this time period, 257 were not analyzed because the complaints had not yet been closed by CAF. Of the remaining 1,024 closed complaints, our staff found 657 apparent violations of our rules and Chapter 364, Florida Statutes.



On June 27, 2001, our staff, OPC, and Talk America met to discuss staff's analysis and possible resolutions. Talk America, Inc. was asked to review the analysis and provide staff with a list of any disputed complaints where Talk America disagreed there was an apparent violation. In addition, our staff and OPC visited Talk America's facility in Palm Harbor to review the company's operations on July 6, 2001.

Our staff, OPC, and Talk America met again on August 3, 2001, to discuss the company's proposed resolution of the issues raised by these dockets. Talk America suggested a possible monetary settlement to resolve the issues but was unwilling to put any offer in writing and requested the details of the conversation be kept confidential. In addition, our staff once again asked Talk America to provide its independent analysis of the complaints as well as a list of those complaints where the company disputed staff's analysis regarding the apparent violations.

Finally, on September 5, 2001, Talk America submitted a preliminary assessment of the complaints. The company made a blanket statement that many of the complaints identified by staff as apparent rule violations were not violations. Talk America has yet to provide the list requested by our staff which would detail the exact complaints in dispute between staff and the company.

The following table summarizes staff's analysis of the complaints that it determined to be apparent violations. The first column of the table lists the rule or statute that has apparently been violated. The second through fifth columns shows the number of apparent violations for each rule for each of the company's certificates. The last column lists the total number of apparent violations for each rule.

**TALK AMERICA, INC. APPARENT VIOLATIONS**  
**by Certificate Number**  
**(7/1/99-5/31/01)**

	2985 IXC	4692 ALEC	4100 IXC	4099 ALEC	TOTAL
<b><u>ISSUE 1</u></b> Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection	298	149	3	72	522
<b><u>ISSUE 2</u></b> Section 364.604(2), F.S., Billing Practices	61	35	2	7	105
<b><u>ISSUE 3</u></b> Rule 25-22.032(5)(a), F.A.C., Customer Complaints	0	0	5	25	30
<b>TOTAL</b>	359	184	10	104	657

We are vested with jurisdiction over this matter pursuant to Sections 364.01, 364.19, 364.183, 364.285, 364.337, 364.603, and 364.604, Florida Statutes.

SHOW CAUSE

Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection

Rule 25-4.118, Florida Administrative Code, prohibits carriers from changing an end user's local or long distance service provider without prior authorization from the customer. Under subsection (2) of the rule, a local provider (LP) or interexchange carrier (IXC) may initiate a service provider change for an end user as long as the prescribed conditions set out in Rule 25-4.118 are met. Subsection (2) of the rule requires LPS and IXCs to document their customer's authorization when initiating a carrier change on behalf of a customer by obtaining a letter of agency (LOA), recording a third party verification (TPV) tape, or one of the other accepted procedures set out in the rule.

Upon review of the 1,024 closed complaints received against Talk America during the period from July 1, 1999, through May 31, 2001, we find that 522 of these complaints are apparent slamming violations because it appears Talk America failed to meet the requirements of Rule 25-4.118, Florida Administrative Code. For instance, in a large number of these complaints, Talk America's LOAs or TPVs did not include all of the information required by Rule 25-4.118(2)(c), Florida Administrative Code. In other complaints, Talk America did not provide any documentation that would prove that the end user authorized Talk America to change service providers.

For 154 complaints, while the company maintains that the customer did authorize the service provider change, Talk America failed to verify the switch. We find that these 154 complaints are apparent violations because Talk America did not provide any proof such as an LOA or TPV that the customers authorized the carrier switch as required by Rule 25-4.118(2). For an additional 10 complaints, Talk America states it resubmitted carrier change requests to the LEC after the customers had canceled service. However, once again, Talk America submitted no documentation that these carrier switches were authorized by the customers. We find that these 10 cases are also apparent violations because Talk America did not provide any proof that the customers authorized the carrier switch as required by Rule 25-4.118(2).

For 100 of the complaints, it appears that Talk America failed to obtain all of the information for the TPVs required by Rule 25-4.118(2)(c)2, Florida Administrative Code. Specifically, the TPV recordings lacked the statements required by subparagraphs (3)(a) 2., 4., and 5. of the rule. We find that these 100 complaints are apparent violations because Talk America failed to provide the carrier change verification information required by Rule 25-4.118(3)(a)2., 4., and 5., Florida Administrative Code.

In 122 of the complaints, it appears that the copies of the LOA checks submitted by Talk America as proof of an authorized service provider change are not valid because incorrect customer information, such as a wrong customer name, address, or phone number, was printed on the checks, or the customer's signature was not included. Rule 25-4.118(3)(a), Florida Administrative Code, requires that the LOA must include the customer's billing name, address, and each telephone number to be changed, as well as the customer's signature. We find that because the LOAs submitted to the company did not contain correct customer information or the customer's signature, Talk America is in apparent violation of Rule 25-4.118, Florida Administrative Code.

Furthermore, it appears that these 122 LOA checks are also misleading and deceptive. Rule 25-4.118(4), Florida Administrative Code, states in pertinent part:

The LOA shall not be combined with inducements of any kind on the same document. The document as a whole must not be misleading or deceptive. For purposes of this rule, the terms "misleading or deceptive" mean that, because of the style, format or content of the document or oral statements, it would not be readily apparent to the person signing the document or providing oral authorization that the purpose of the signature or the oral authorization was to authorize a provider change, or it would be unclear to the customer who the new provider would be; that the customer's selection would apply only to the number listed and there could only be one provider for that number; or that the customer's LP might charge a fee to switch service providers. . . .

The 122 LOA checks in question stated:

. . . THE SIGNING, CASHING AND/OR DEPOSITING OF THIS CHECK WILL SWITCH YOUR LONG DISTANCE SERVICE AND LOCAL TOLL TO AOL LONG DISTANCE SAVINGS PLAN PROVIDED BY TALK.COM HOLDING CORP.

It appears that these checks did not readily identify for the customer who his new provider would be upon endorsing the check. Also, the LOA checks denoted the AOL Online logo in the upper left hand corner. An example is attached to this Order as Attachment A. We find that the style, format, and content of these LOA checks are deceptive and misleading in apparent violation of Rule 25-4.118(4), Florida Administrative Code.

In 23 of the complaints, Talk America switched additional phone lines or it switched either the customers' local, intraLATA, or interLATA service in addition to another service without the customers' specific authorization to do so. Thus, the customers agreed to have only one line or one type of service, local, local toll, or interLATA long distance, switched, but Talk America switched more services than the customers authorized. Rule 25-4.118(3)(a)1. and 2., Florida Administrative Code, requires that the LOA or TPV include a statement that clearly identifies the service to which the customer wishes to subscribe and each telephone number to be changed. In these 23 cases, we find that Talk America switched additional services or telephone numbers that were not clearly identified on the LOA or TPV in apparent violation of Rule 25-4.118(3)(a)1. and 2., Florida Administrative Code.

For 14 of the complaints, Talk America claims that the customers initiated the call or the LEC selected its carrier code. However, the company did not provide any verification data that proved the customers had, in fact, initiated the calls. Rule 25-4.118(2), Florida Administrative Code, requires a LP or IXC to submit a change request only if it has first certified to the LEC that at least one on the actions required by Rule 25-4.118(2)(b), Florida Administrative Code, has occurred. We find that by not obtaining the customers' verification information the company is in apparent violation of Rule 25-4.118(2)(b), Florida Administrative Code.



For 99 complaints, it appears the information provided by Talk America provided the customers during telemarketing was misleading or deceptive under Rule 25-4.118(10), Florida Administrative Code. Rule 25-4.118(10) provides:

During telemarketing and verification, no misleading or deceptive references shall be made while soliciting for subscribers.

In 36 of these 99 complaints, Talk America representatives misquoted rates or periods of free service that the customers would receive. The customers reported they never received the promised rates or promotional incentives. In 43 of these 99 complaints, Talk America promoted its local service as costing ten percent less than BellSouth for the same services. Talk America did not provide extended calling services for local customers as it had indicated during its solicitation, and ultimately, billed the customers at a much higher rate than that charged by BellSouth. We find that Talk America is in apparent violation of Rule 25-4.118(10) because of the apparent misleading or deceptive practices employed by Talk America while telemarketing.

In addition, in 20 of these 99 complaints, the customers reported that they switched to Talk America based on the information presented to them during telemarketing. Talk America marketed its services as the AOL long distance or AOL local savings plan provided by Talk.com Holding Corp. During its solicitations, Talk America did not clearly indicate the provider to whom the customer would be switching nor did the company disclose that the purpose of the call was to solicit a change in service providers. Under Rule 25-4.118(9)(a) and (b), Florida Administrative Code, when a company solicits a change in service from a customer, the company must provide:

- (a) Identification of the company; [and]
- (b) That the purpose of the visit or call is to solicit a change of the provider of the customer . . .

Moreover, the customers indicated that they did not realize their service would be switched from their preferred carrier to Talk America. The complainants reported that they believed they were signing up for a savings plan offered by AOL as a membership

perk or that AOL was providing the service. During the investigation, our staff confirmed that Talk America apparently marketed its local and long distance services as a form of discounted savings plan offered by AOL. This promotion apparently caused a great deal of confusion among the company's customers. One example is a form letter attached to this Order as Attachment B, that was sent to existing AOL internet customers to solicit enrollment in a new savings plan. Nowhere in the letter does it disclose that the customers' service would be switched to any of Talk America's certificated names or its various doing-business-as names. We find that these telemarketing practices by Talk America are apparent violations of Rule 25-4.118(9)(a) and (b) and (10), Florida Administrative Code.

Section 364.604, Florida Statutes, Billing Practices

As noted previously, upon reviewing 1,024 of the closed complaints received against Talk America during the period from July 1, 1999, through May 31, 2001, it appears that at least 105 of the complaints are apparent violations of Section 364.604(2), Florida Statutes, Billing Practices. Under Section 364.604(2), Florida Statutes:

A customer shall not be liable for any charges for telecommunications or information services that the customer did not order or that were not provided to the customer.

In 32 complaints, Talk America duplicated charges for services, fees, or taxes on the customer's bill. We find that these duplicated charges are apparent violations of Section 364.604(2), Florida Statutes.

In 18 complaints, Talk America billed the customer prior to provisioning service. Talk America routinely initiated the billing process prior to provisioning its service, sometimes for several months. Consequently, the customer received bills for a period of time in which they did not receive service from Talk America. We find that these billing practices are apparent violations of Section 364.604(2), Florida Statutes.

In 5 complaints, Talk America billed customers for calling features the customer did not order or authorize. Upon switching service to Talk America, those customers were billed for services they did not order. We find that these billing practices are apparent violations of Section 364.604(2), Florida Statutes.

Talk America billed most of these customers by electronic fund transfer from their checking accounts or by charging their credit card accounts. These complainants have reported that upon calling Talk America's customer service to inform the company of the billing problems, they experienced lengthy hold times. When the customers finally connected with a customer service representative, the representative often transferred the customers to another representative, who in turn transferred the customers again. Each time, the customers were put on hold. The customers were never able to speak with a representative who could resolve their problems, and the company continued to automatically deduct the monthly recurring charges from the customers' accounts.

We also find that Talk America's billing practices apparently violate Section 364.604(2), Florida Statutes, Billing Practices, because Talk America failed to provide the customers with a credit or refund for charges or services the company did not provide. The company resolved the overcharges and ceased billing only after the customers filed a complaint with us.

In 50 cases, Talk America sent erroneous bills to consumers who were not presubscribed customers of Talk America. Talk America reported that on at least three occasions, during the period June 2000 through September 2000, and again in March of 2001, the company mailed out thousands of erroneous bills to consumers who reportedly used Talk America's 101XXXX code. The company billed the consumers for recurring charges and taxes that are customarily billed to presubscribed customers. In the first incident, Talk America provided an explanation for the erroneous billing and indicated that it changed its data processing system to prevent a reoccurrence of the billing problem. The company also notified the affected consumers and instructed them to ignore the invoice. An example is attached to this Order as Attachment C and incorporated herein by reference. In that notice Talk America offered to give the customer \$25 worth of free long distance service if they called a special toll free number and signed up to receive a credit off

their next long distance bill. This statement is very curious and raises additional questions and doubts as to the true nature of the erroneous invoices and subsequent offer of free long distance service. First, why would the customer have to sign up to receive \$25, and second, how would the customer receive the credit on their bill if they are not a Talk America customer? In the second erroneous billing incident, Talk America notified this Commission about the billing error in a letter dated March 30, 2001, which is attached as Attachment D, and incorporated by reference. However, the company cited the same reason for the erroneous billing and again stated it was changing its data processing procedures to prevent the problem from reoccurring. Apparently, Talk America did not take the appropriate actions to prevent the billing error from occurring again as the company had indicated.

We find that these erroneous bills are a form of cramming and an apparent violation of Section 364.604(2), Florida Statutes, for several reasons. First, the erroneous bills were sent out on at least three separate occasions, inferring that the company does not have the necessary procedures and controls in place to properly bill customers for its services. Second, the bills were for recurring charges and taxes associated with services that Talk America never provided. Third, although cramming usually involves the practice of adding unauthorized charges on customers' regular bills, cramming may occur when a company sends consumers entire bills with nothing but unauthorized charges listed.

Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints

During the period from May 23, 2000, through November 17, 2000, CAF received 30 customer complaints against Talk America's affiliate, Access One Communications, in which the company failed to provide a written response within 15 working days from the date of our staff's inquiry. Under Rule 25-22.032(5)(a), Florida Administrative Code, a company must respond to a complaint within 15 days of our staff's notification to the company of the complaint. Talk America has timely responded to other complaints, and there is no explanation for the company's failure to respond in these 30 cases. Thus, CAF closed each of the complaints as violations of Rule 25-22.032(5)(a), Florida Administrative Code, in April 2001. Subsequently, the complaints were sent to Talk

America's ALEC operation in an attempt to have the company's response in the Consumer Activity Tracking System (CATS). Although Talk America did respond to all but three of the complaints by May 2001, the initial responses were not timely received by us as required by Rule 25-22.032(5)(a), Florida Administrative Code. Therefore, we find Talk America to be in apparent violation of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints.

#### CONCLUSION

We find that Talk America's conduct of slamming customers in apparent violation of Rule 25-4.118, Florida Administrative Code, as described above, is "willful" within the meaning and intent of Section 364.285, Florida Statutes. We also find that Talk America's conduct of cramming customers in apparent violation of Section 364.604(2), Florida Statutes, as described above, is "willful" within the meaning and intent of Section 364.285, Florida Statutes. Finally, we find that Talk America's failure to respond to customer complaints in apparent violation of Rule 25-22.032(5)(a), Florida Administrative Code, as described above, is "willful" within the meaning and intent of Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled 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., the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[I]n our view, 'willful' implies intent to do an act, and this is distinct from intent to violate a statute or rule." Thus, any intentional act, such as Talk America's conduct at issue here, would meet the standard for a "willful violation."

Section 364.285(1), Florida Statutes, authorizes us to impose upon any entity subject to its jurisdiction a penalty for each offense 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 this Commission, or any provision of Chapter 364, Florida Statutes. Utilities are charged with knowledge of our 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).

The proposed fine amounts per violation as discussed below are consistent with amounts we have previously imposed for similar violations.

Therefore, based on the aforementioned, we find that Talk America, Inc. shall be ordered to show cause in writing within 21 days of the issuance of this Order why it should not be fined \$10,000 per apparent violation, totaling \$5,220,000, for 522 apparent violations of Rule 25-4.118, Florida Administrative Code. We also find that Talk America, Inc. shall be ordered to show cause in writing within 21 days of the issuance of this Order why it should not be fined \$10,000 per apparent violation, totaling \$1,050,000, for 105 apparent violations of Section 364.604(2), Florida Statutes. Finally, Talk America, Inc. shall be ordered to show cause in writing within 21 days of the issuance date of this Order why it should not be fined \$10,000 per apparent violation, totaling \$300,000, for 30 apparent violations of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints. The company's response shall contain specific allegations of fact and law. If Talk America, Inc. 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 Talk America, Inc. pays the fine, it should be remitted by us to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. 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, Certificate Nos. 4099, 4100, 4692, and 2985 shall be canceled.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Talk America Inc. shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$10,000 per apparent violation, totaling \$5,220,000, for 522 apparent violations of Rule 25-4.118, Florida Administrative Code, Toll, Local Toll, or Toll Provider Selection. It is further

ORDERED that Talk America Inc. shall show cause in writing within 21 days of the issuance of this Order why it should not be fined \$10,000 per apparent violation, totaling \$1,050,000, for 105

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apparent violations of Section 364.604(2), Florida Statutes, Billing Practices. It is further

ORDERED that Talk America Inc. shall show cause in writing within 21 days of the issuance date of this Order why it should not be fined \$10,000 per apparent violation, totaling \$300,000, for 30 apparent violations of Rule 25-22.032(5)(a), Florida Administrative Code, Customer Complaints. It is further

ORDERED that Talk America Inc.'s response to this Order shall contain specific allegations of fact and law. It is further

ORDERED that in the event Talk America Inc. fails to respond to this 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. It is further

ORDERED that in the event Talk America Inc. pays the fine, it shall be remitted by us to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. It is further

ORDERED that in the event Talk America Inc. fails to respond to this Order, and the fine is not paid within ten business days after the expiration of the show cause response period, Certificate Nos. 4099, 4100, 4692, and 2985 shall be canceled. It is further

ORDERED that in the event Talk America timely responds to this Order, these dockets shall remain open pending resolution of the show cause proceedings. It is further

ORDERED that should Talk America fail to respond to this Order or pay the proposed fines within ten business days after the expiration of the 21-day response period, upon cancellation of certificate numbers 4099, 4100, 4692, and 2985, these dockets may be closed administratively.

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By ORDER of the Florida Public Service Commission this 23rd  
day of October, 2001.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records and Hearing  
Services

( S E A L )

MAH/PAC

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.




This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 13, 2001.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any 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 the Commission Clerk, 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.

ORIGINAL



**CHECK EXPIRES MAY 31, 2000. THE SIGNING, CASHING AND/OR DEPOSITING  
 OF THIS CHECK WILL SWITCH YOUR LONG DISTANCE SERVICE AND LOCAL  
 TOLL TO AOL LONG DISTANCE SAVINGS PLAN PROVIDED  
 BY TALK.COM HOLDING CORP.**

3-50  
310

No. **72255350**  
 Issue Date **April 25, 2000**

**PAY TO THE ORDER OF:**  
 Benjamin Akinola  
 PO Box 245553  
 Pembroke Pines FL 33024-0109

**PAY** Twenty Five and 00/100 DOLLARS

Check Amount:  
**\$25.00**

Customer Phone Number (954) 437-3625

⑆000000 2500⑆

**IMPORTANT - PHONE NUMBER MUST BE CORRECT**

030227464 3509 3510 09

5273 98587

8-31-00

5/3/00

5/3/00

Union National Bank certifies that the above image is a true and exact copy of the original form issued by the named  
 payee, and was produced from original data stored in the archives of First Union National Bank or its predecessors.

**GET \$50  
TO ENROLL  
TODAY**



**UNLIMITED  
LOCAL CALLS\*\***



**SAME CALLING  
FEATURES**



**200 MINUTES  
OF LONG  
DISTANCE  
EVERY MONTH**



**NO CHANGE  
IN PHONE  
NUMBER  
AND CALL  
QUALITY**

## This \$50 check is real. And so is the money you'll save.

Dear Ygnacio Moreno:

As an AOL Member, you have been selected to receive \$50 to enroll in a new savings plan. Simply cash the attached check on or before August 31, 2000, and get an extra \$50 to spend any way you wish.

When you do, you'll join the thousands of people who've discovered they finally have a choice over their local Bell company. A choice that guarantees simplicity and savings for local and long distance telephone service through one simple plan.

**Unlimited local calls and 200 minutes of long distance every month -  
for one affordable price.**

You get unlimited local calling, and the same calling features you have now—like call waiting, caller ID and voice mail.\* Plus 200 minutes of long distance\*\* (including state-to-state and in-state calls) each month—all for just \$49.95. It's one of the best values in telephone service anywhere. ←

**It's easy. Same phone number. A brand new way to save.**

No hassles to change, and you won't notice anything but the savings. You'll keep the same number, the same phone lines and the same features you have now. What's more, you'll enjoy the convenience of having one phone company for both long distance and local service.

**You'll get \$50 for enrolling today.**

To start enjoying all of these benefits today—including the convenience of one bill for all your local and long distance charges—just sign and cash the attached \$50 check and you'll be automatically enrolled.

Remember, the \$50 is yours to use as you wish. If you have any questions, just call our Customer Service professionals at 1-877-955-4255. Don't wait! The sooner you join, the sooner you'll start saving on all your calls each month. For additional information, just go to **KEYWORD: Local Phone**.

Sincerely,

Gregory Luff  
America Online

P.S. Due to the special nature of this program, the attached check is only valid until August 31, 2000. So be sure to cash or deposit your \$50 check today.

\* There will be a one-time \$10 connection fee for voice mail if you do not currently have this service. For terms of service and additional information, please go to **KEYWORD: Local Phone**, or call us at 1-877-955-4255.

\*\* Unlimited non-toll local calling. The 200 long distance minutes apply to domestic dial-1 calls placed from your home phone. Includes in-state, local toll and state-to-state long distance minutes, and does not include international calls. A low rate of 9.9¢ per minute applies to long distance usage exceeding the 200 minutes within a billing cycle. The 200 minutes do not include international calls. International rates may vary.

**Another Special AOL Member Perk**



September 15, 2000

Dear Sirs:

This letter is in regard to a recent billing error experienced by certain consumers from Talk.com Holding Corp. ("Talk.com"). Talk.com is in the process of correctly identifying the affected customers, crediting the accounts of existing customers, stopping additional erroneous billing and preventing a reoccurrence of the problem.

Situation

Starting on or about June 1, 2000 Talk.com appears to have sent certain erroneous billing data to our outside billing house for invoicing. Approximately 110,000 accounts may have received inaccurate invoices.

In summary, the affected customers did make the calls as indicated by the call detail, however three mistakes may have occurred. First, Talk.com incorrectly rated these call records as 1+ presubscribed accounts and therefore certain monthly recurring fees associated with 1+ traffics were incorrectly calculated and added to the invoice. Secondly, certain "old" calls, (those which occurred over 90 days from the billing date) were inadvertently sent to the billing house. Lastly, Talk.com seems to have generated a second and in a few cases a third, set of erroneous invoices for these account. This happened because they appeared in the billing system as valid 1+ presubscribed accounts. The first sets of incorrect invoices are dated June 2000; the second batches are dated July 2000. Less than 2,000 received a third invoice dated in August 2000, before we caught the error.

Apparently the affected calls are for "casual calling" traffic, that being calls made by dialing a long distance call from a home telephone number without being presubscribed to a long distance carrier. In these cases, the caller first dials a 101XXXX code and then the terminating telephone number. These call are generally then billed to the customer through an arrangement with the local exchange carrier. In this case, Talk.com directly invoiced the call detail to the end-users, and not through the local exchange carrier. Unfortunately, Talk.com mis-coded these call records in the billing system and they were billed as 1+ presubscribed traffic. This resulted in calls being rated at standard 1+ presubscribed rates with the associated 1+ monthly recurring fees, PICC, USF and various federal and local taxes. These calls should have been rated as "casual calling" records and therefore not subject to these same recurring charges.

Talk.com will cancel all of these erroneous invoices and will not attempt to collect any of the monies due from these invoices. Moreover, the company will return any collected monies to customers who may have already paid these invoices. Our customer service centers have already been instructed in the proper procedures for handling any customer that calls to discuss this situation. We have set up a special hot-line 800 number to handle the anticipated calls. The number is 877-825-5003.

In order the remedy this situation; Talk.com is taking the following action.

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- We are attempting to correctly identify the call records and customers who were erroneously billed. This is complicated by the fact that these call records were commingled with existing 1+ presubscribed traffic which was rated and billed correctly.
- Once this is completed we will send a letter to all effected customers telling them to please ignore the invoices that they received from Talk.com during this period.
- We will offer these customers a special \$25 additional credit for free long distance calling as our "apology" for mis-billing these customers. An explanation of how to redeem this offer will be included in the letter. (see attached)
- Lastly, we are changing our data processing system to prevent a reoccurrence of this problem. This will stop a similar mis-coding problem from effecting future "casual calling" traffic billed through our system.

We sincerely apologize for any inconvenience this situation may have caused. We will be glad to answer any questions that you may have regarding this unfortunate incident.

Sincerely;

Tina Tecce  
Director, Regulatory Affairs

REGLTRMB:GV:000914

Date

Addr1  
Addr2  
Addr3

Dear Sirs:

This letter is in regard to a recent invoice you may have received from Talk.com in August 2000 and again in September 2000. The invoice may contain inaccurate billing information. **Please ignore these invoices, you do not have to pay them.** We are in the process of correcting this error and changing our procedures to ensure that this does not happen again. We sincerely apologize for any inconvenience this situation may have caused.

**Talk.com has canceled all of these erroneous invoices and will not attempt to collect any of the monies due. Your credit record will not be affected.** Our customer service centers have been instructed in the proper procedures for handling this situation. If you have any questions, please call us toll-free at 1-877-825-5003. This hot line was set up specifically for this situation.

As one of the leading consumer long distance companies, with over 1.4 million satisfied customers, we are deeply concerned with the negative impression this error may have created. We are therefore offering to give you **\$25 worth of free long distance service**, as our way of saying, "we are very sorry" for this unfortunate event. This special offer however, is only available to consumers who have received an inaccurate invoice. Simply call our special customer service number 1-877-825-5003 and sign up to receive this \$25 credit off your next long distance bill. Again, we apologize for this error and hope you will take advantage of this free credit on long distance calling.

Sincerely,

Greg Luff  
Director, Customer Service

ORIGINAL

LAW OFFICES  
**MESSER, CAPARELLO & SELF**  
A PROFESSIONAL ASSOCIATION

212 SOUTH MONROE STREET, SUITE 701  
POST OFFICE BOX 676  
TALLAHASSEE, FLORIDA 32306-1676  
TELEPHONE (850) 222-0780  
TELECOPIER (850) 224-4388  
INTERNET WWW.MWR1.COM

March 30, 2001

**VIA TELECOPIER**

Ms. Bev DeMello  
Director  
Division of Consumer Affairs  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Talk.com

Dear Bev:

This letter is to follow up on our conversation regarding the billing error affecting certain consumers of Talk.com Holding Corp. ("Talk.com"). Talk.com found this error in the current monthly billing cycle and is taking all necessary steps to rectify the situation. Moreover, Talk.com has applied credits to the affected accounts, is refunding any mistakenly collect monies and is actively working on a permanent solution to the problem.

**Summary of Problem**

During the March 2001 billing cycles, Talk.com mistakenly sent certain erroneous billing information to their outside billing house for invoicing. Approximately 6222 customers were affected by this error in Florida.

Essentially, the affected customers had previously been suspended in the billing system and flagged for special treatment. Due to human error, these customers inadvertently were put back into the regular billing system.

Apparently, most of the affected customers should have been classified as "casual callers," those being callers who make long distance calls from their home telephone numbers without being presubscribed to Talk.com as their primary long distance carrier. In these cases, the caller first dials one of our 101XXXX codes and then the terminating telephone number. These calls then generally are billed to the customer through an arrangement with the local exchange carrier. In this case, Talk.com directly invoiced the call detail to the end-users, and not through the local exchange

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Ms. Bev DeMello  
March 30, 2001  
Page -2-

carrier. Unfortunately, Talk.com correctly suspended the customer's call detail but then inadvertently re-coded the calls and billed them as 1+ presubscribed traffic. This resulted in calls being rated at our standard 1+ presubscribed rates with the associated 1+ monthly recurring fees, Local Connect Surcharge (LCS), federal universal service fund (USF) surcharge, and various federal and local taxes. These calls should have been rated as "casual calling" records and therefore not subject to these same recurring charges.

Resolution

In order to remedy this situation; Talk.com is taking the following action:

1. Talk.com has canceled all of these erroneous invoices and will not attempt to collect any of the monies due from these invoices.
2. Customer service centers have been instructed in the proper procedures for handling any customer that calls to discuss this situation. They have set up a special toll-free number, 877-825-5003, to handle the anticipated calls.
3. Talk.com has correctly identified the call records and customers who were erroneously billed. They have contacted or are in the process of contacting each of these customers by telephone to explain the situation and to instruct them to ignore the invoices.
4. Talk.com is sending a letter to all affected customers asking them to ignore the invoices and explaining the mistake. A copy of this letter is enclosed herein.
5. Lastly, Talk.com is changing their data processing procedures to prevent a reoccurrence of this problem. Specifically, Talk.com will actively move these customers into a new billing file that will permanently remove them from the monthly 1+ billing rounds.

Our client sincerely apologizes for any inconvenience that this situation may have caused. Please do not hesitate to contact me with any questions or concerns that you may have regarding this matter.

Sincerely,

  
Floyd R. Sain

FRS/amb  
cc: Francie McComb, Esq.





TALK.com Holding Corp  
6805 Route 202  
New Hope, PA 18938

March 28, 2001

Dear TALK.com Customer:

Over the last few days our customer service representatives have attempted to contact you regarding a recent invoice you may have received from Talk.com in March 2001. We are sending this letter now as a reminder that this invoice may contain inaccurate billing information. Please ignore this invoice, do not pay it. We are in the process of correcting this billing error and changing our procedures to ensure that this does not happen again. We sincerely apologize for any inconvenience this situation may have caused.

Talk.com has cancelled all of these erroneous invoices and will not attempt to collect the amounts billed in error. Moreover we will refund any mistakenly collected monies from customers who may have already paid these invoices. Your credit record will not be affected. Our customer service centers have been instructed in the proper procedures for handling this situation. If you have any questions, please call us at 1-877-825-5003. This hot-line was set up specifically for this situation.

As one of the leading consumer long distance companies, with over 1.4 million satisfied customers, we are concerned with the negative impression this error may have created. Please do not hesitate to call us with any questions or concerns you may wish to express. Again, we apologize for this error and any inconvenience this may have caused.

Sincerely,

Jeff Earhart  
Vice President, Customer Service