**FLORIDA PUBLIC SERVICE COMMISSION**

 **Fletcher Building**

 **101 East Gaines Street**

 **Tallahassee, Florida 32399-0850**

 **M E M O R A N D U M**

 **August 25, 1994**

**TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING**

**FROM : DIVISION OF COMMUNICATIONS [King]**

 **DIVISION OF LEGAL SERVICES [Hatch]**

**RE : DOCKET NO. 930416-TC - INVESTIGATION OF NORTH AMERICAN INTELECOM, INC. FOR INCORRECT BILLING OF COLLECT CALLS FROM VARIOUS PRISONS**

**AGENDA: 9/6/94 - REGULAR AGENDA - INTERESTED PARTIES MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**SPECIAL INSTRUCTIONS: I:\PSC\CMU\WP\930416B.RCM**

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 **CASE BACKGROUND**

 On July 26, 1993, the Commission issued Order No. PSC-93-10830-FOF-TC, requiring North American Intelecom, 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, issued February 14, 1991. The Order also required NAI to refund all monies incorrectly collected from the ratepayers who were billed for collect telephone calls (pages 6-9). The refund and collection costs were estimated at $65,000, with costs and refunds approximately equal.

 NAI responded to that Order on August 16, 1993, 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. NAI made a settlement offer to refund $65,000 and pay a $2,000 settlement to the Commission in November 1993; however, staff conducted further tests of NAI's service and discovered additional Docket No. 930416-TC

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apparent violations of the Commission's rules. Since that time, NAI has come forth with an additional settlement offer. Therefore, staff believes the following recommendations are appropriate.

 **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission accept NAI's settlement offer?

**RECOMMENDATION:** No. NAI should be responsible for the entire amount overcharged, including the portion remitted to the Department of Corrections. Therefore, staff recommends that this matter be set for hearing.

**STAFF ANALYSIS:** Since the original show cause was brought before the Commission, staff has discovered the following violations:

 Continued overcharging/overtiming.

 Use of concentrators.

 Deletion of the "voice window".

After these discoveries were made NAI made another settlement offer. The offer (pages 10-11) provides the following:

 Refund a portion of its overcharges amounting to $250,000 by way of a reduced rate for future calls from the confinement facilities.

 NAI will make a payment of any remaining monies not refunded if NAI is not awarded a contract with DOC after February 1995.

 NAI makes no offer of a fine to be paid.

 Staff believes the settlement offer should be rejected for the following reasons:

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 By its own admissions, NAI has overcharged its customers $394,318. NAI believes it should not be ordered to refund the entire amount because $144,000 was paid to the Department of Corrections (DOC) as commission payments. Staff believes the settlement offer should be rejected unless NAI agrees to refund the entire amount of overcharges. NAI is the responsible party for overcharging the consumers and should be held responsible for the entire $394,318. Additionally, interest should be added and calculated in accordance with Commission Rule 25-4.114, F.A.C.

 Staff also has concerns 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. 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.

 Furthermore, the Division of Consumer Affairs has received additional complaints against this company. Staff has also received several complaints from Ms. Jeri Friedman, who was a primary complainant when the docket was first brought before the Commission, alleging poor service and overbilling due to overtiming. Because of the additional complaints staff has continued its investigation which led to discovery of additional overcharges. On February 14 and 15, 1994, a staff engineer 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 was of grave concern to staff because the company assured staff many times that all programming and equipment errors were corrected.

 Staff met with NAI on April 7, 1994, to discuss these test calls as well as the complaints that were received. Representatives from the Florida Department of Corrections (FDOC) were also in attendance. During this meeting it was discovered that NAI has been incorrectly timing calls, which results in a 1 minute overcharge in some cases per call. 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 Docket No. 930416-TC

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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 in the tariff as the time during which two way **communication** is possible.

 Pages 12-13 of this recommendation is a response dated May 2, 1994, from NAI to a complainant explaining why additional time is added to the call as chargeable time. Please also 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 choose to correct this timing problem after staff brought it to the company's attention.

 An additional problem discovered in the meeting and confirmed with written data requests is that NAI is using concentrators at the facilities it serves. These devices operate much like a Private Business Exchange (PBX) and allow concentration of access

lines to a higher number of pay telephones. If a concentrator is

used to serve pay phones often there are insufficient lines to complete all calls. This is why the Commission's rules require one line for each pay phone instrument. Staff also believes this to be the cause of the numerous blocked call attempts reported to the Commission staff as well as to prison officials by the inmates.

 The information provided to staff 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), F.A.C.; Pay Telephone Service, which 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 Commission Order 14529 issued July 1, 1985. In this order the Commission established the policy of one pay phone per access line.

 Further, NAI began serving confinement facilities in Florida in September 1991. Staff received its first complaint against this company in October 1991. In addition, FDOC provided staff with copies of "inmate request" forms which are the documents used by an inmate to voice concerns to the facility staff. There were approximately 86 Docket No. 930416-TC

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inmate phone related complaints/inquiries for the period from October 1, 1993, through April 15, 1994. Moreover, 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. NAI deleted the voice window at the request of DOC. We have suggested a solution to address both DOC's and our concerns; however, NAI has not yet acted on this suggestion. Therefore, we believe this issue should also be resolved in any settlement. Accordingly, we believe it is appropriate to reject this settlement offer and set this matter for hearing.

 For information purposes, if the Commission elects to levy a fine, the company reports $6,088,487.52 of intrastate revenues on its latest regulatory assessment fee form and other companies have paid up to $100,000 in fines for similar violations and severity.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** No. This docket should remain open.

**STAFF ANALYSIS:** If the Commission approves Issue 1, this docket should remain open and the matter be set forth for hearing. If the Commission denies staff on Issue 1, this docket should remain open pending the conclusion of the refund process.