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Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

RECEIVED
OCT 23 1998
COMMUNICATIONS SECTION

DATE: 10/22/98

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (WATTS) *Watts*
 DIVISION OF COMMUNICATIONS (YAMBOR) *Yambor*
 DIVISION OF CONSUMER AFFAIRS (JOHNSON) *Johnson*

RE: DOCKET NO. 981247-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST AMERICAN NORTEL COMMUNICATIONS INC. FOR VIOLATION OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER SELECTION

AGENDA: 11/03/98 - REGULAR AGENDA -ISSUE 1 -SHOW CAUSE- INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981247TI.RCM

CASE BACKGROUND

On March 21, 1998, the Commission granted American Nortel Communications, Inc. (Nortel) certificate number 5336 to provide intrastate interexchange telecommunications service.

On August 4, 1998, staff contacted Nortel by telephone and in writing, requesting a response to an escalating number of slamming complaints for June and July of 1998. It appears these complaints were generated by a sweepstakes drawing offered by a marketing company listed as GTM Communications (GTM).

On August 10, 1998, Nortel responded that it did not use GTM and further they assured staff they are in compliance regarding

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PSC-RECORDS REPORTING

long distance carrier change rules. It should be noted the LOA designates Nortel as the carrier (Attachment A, Pg. 6).

However, Nortel's slamming complaints continued. It had 35 slamming complaints for August, 1998 and 41 more in September 1998. In total, from April 21, 1998, through September 30, 1998, the Commission's Division of Consumer Affairs received 102 consumer complaints against Nortel. Within this 5 month period, at least 16 of these were closed by the Division of Consumer Affairs, with concurrence by telecommunications staff, as unauthorized carrier change (slamming) infractions in apparent violation of Rule 25-4.118, Florida Administrative Code.

Nortel, in its response to all consumer complaints, provided no proof on how the PIC change occurred. Nortel is submitting numerous preferred interexchange carrier (PIC) changes with apparent fraudulently obtained customer telephone numbers and without any validation at all.

In light of the numerous complaints received from consumers, and the company's unsupported claims of any (PIC) verification, it appears that Nortel has violated Commission rules and has not established sufficient safeguards to protect consumers from unauthorized carrier changes. Therefore, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Nortel to show cause why it should not have Certificate Number 5336 canceled or be fined \$10,000 per violation for a total of \$160,000 for failure to comply with Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection?

RECOMMENDATION: Yes. The Commission should order Nortel to show cause in writing within 20 days of the effective date of the order why it should not be fined \$10,000 per violation for a total of \$160,000 or have its certificate canceled for failure to comply with Rule 25-4.118, Florida Administrative Code. Any collected fine monies should be forwarded to the Office of the Comptroller for deposit in the state General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. (Yambor)

STAFF ANALYSIS: The Division of Consumer Affairs received its first slamming complaint against Nortel on April 21, 1998. Within 5 months, the Division of Consumer Affairs has received 102 complaints and closed a total of 16 consumer complaints against Nortel as unauthorized carrier change (slamming) infractions through September 28, 1998. In its response to Consumer Affairs, Nortel made no attempt to offer proof of any authorization. Therefore, it appears that all PIC changes were obtained by apparent fraudulent means.

Examples of complaints received from consumers include the following:

On May 18, 1998, Ms. Micheline Dionne, reported to Consumer Affairs that Nortel had switched her service without authorization or request. Nortel offered no (PIC) authorization in its response. (Attachment B, Pg. 7)

On June 11, 1998, Ms. Janet Aaron wrote (Attachment C, Pg. 8,9) and reported her long distance carrier had changed without authorization. When contacting Nortel, Ms. Aaron was told she must have authorized the marketing people for the switch. Ms. Aaron remarked, "that can't be as I do not receive marketing calls since I am on the no solicitation list". Nortel offered no explanation as to how the switch took place.

On August 17, 1998, Ms. Judith Canning, filed an e-mail complaint with the Commission stating she had been slammed. Subsequent investigation and response from Nortel again, gave no explanation as to how Ms. Canning was switched. (Attachment D, Pg.10)

On August 21, 1998, Mr. Charles Utterback, wrote the Commission and complained he was slammed. Repeated attempts by Mr. Utterback requesting Nortel to restore him to his preferred carrier were to no avail. The investigation by Consumer Affairs and resulting response by Nortel was "we will delete this customer from our database". (Attachment E, Pg.11)

On August 25, 1998, Ms. Eileen Edge filed a complaint to Consumer Affairs asserting her long distance carrier had been changed without authorization. Nortel gave no explanation as to how this customer's long distance carrier was changed. (Attachment F, Pg. 12)

The Division of Consumer Affairs requested third party verification [LOA's or Tapes] on each of these complaints. None were provided. Failure to maintain LOA's is an apparent violation of Rule 25-4.118 (2) (d), Florida Administrative Code. Further, since some customers allege that Nortel never contacted them at

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all, these complaints give the appearance that Nortel is in apparent violation of 25-4.118 (6) (c), Florida Administrative Code, and is operating in a willful and deceptive manner. Accordingly, by Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's 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).

Based on the number of complaints received by the Division of Consumer Affairs, and the 16 complaints closed by the Division of Consumer Affairs as unauthorized carrier change infractions (slamming), staff believes there is sufficient cause to order Nortel to show cause in writing within 21 days of the effective date of the order why it should not be fined \$10,000 per infraction for a total of \$160,000 or have its certificate canceled for its apparent violations of Rule 25-4.118, Florida Administrative Code.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, then Nortel will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If Nortel timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If Nortel does not respond to the Commission's Order to Show Cause, the fines should be assessed. While staff does not recommend in Issue 1 that Nortel's certificate be canceled for slamming violations at this time, staff does recommend that if Nortel fails to respond to the Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, Nortel's certificate should be canceled and this docket closed administratively. (Watts)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then Nortel will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If Nortel timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If Nortel

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DATE: October 22, 1998

does not respond to the Commission's Order to Show Cause, the fines should be assessed. While staff does not recommend in Issue 1 that Nortel's certificate be canceled for slamming violations at this time, staff does recommend that if Nortel fails to respond to the Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, Nortel's certificate should be canceled and this docket closed administratively.

OFFICIAL LOA FORM
LONG DISTANCE APPLICATION
PLEASE PRINT-FILL OUT COMPLETELY

AGE (REQUIRED)
18 TO 35 _____
36 & OVER _____

DATE (REQUIRED) _____

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

HOME PHONE (REQUIRED) (_____) _____ - _____

SIGNATURE (REQUIRED) _____

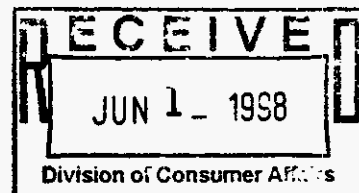
I certify that I am at least 18 years of age. I further understand that I may cancel this agreement at any time. I hereby authorize American Nortel Communications Inc. (ANCI) to act as my agent, and to convert the long distance service on my phone listed above from my current carrier to ANCI. I understand that this LOA changes my carrier, and that I may designate only one carrier at a time for any I number. I understand that I will be billed through my local telephone company by ANCI. I understand that my local phone company may access a charge for my conversion to ANCI. If this occurs, ANCI will pay me back if I send a copy of my bill to ANCI.

AMERICAN NORTEL COMMUNICATIONS, INC.

7201 E. CAMELBACK RD, SUITE 320 SCOTTSDALE, ARIZONA 85251 PHONE 602 945-1266 FAX 602 945-1909

May 28, 1998

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BLVD
TALLAHASSEE, FL 32399-0850
ATT: ELLEN PLENDL



RE: MICHELINE DIONNE #2139861

DEAR MR. GONZALEZ,

WE HAVE ARRIVED AT THE FOLLOWING CONCLUSION REGARDING THE COMPLAINT BY MS DIONNE.

AMERICAN NORTEL COMMUNICATIONS, INC. (ANC) IS A SWITCHLESS TELECOMMUNICATION COMPANY WHICH PROVIDES LONG DISTANCE SERVICE THROUGHOUT THE UNITED STATES.

IT IS OUR STANDARD PRACTICE TO PROVIDE OUR CUSTOMERS WITH THE BEST POSSIBLE SERVICE AND RESOLVE ISSUES OF IMPORTANCE TO THE CUSTOMER.

ACCORDING TO OUR RECORDS, SAID CUSTOMER WAS CANCELLED BEFORE SUSTAINING ANY CHARGES TO THEIR ACCOUNT. IF IN THE INTERIM SAID CUSTOMER WAS TO SUSTAIN ANY TYPE OF CHARGES, PLEASE CONTACT MY OFFICE AND WE WILL ADDRESS THE ISSUE IMMEDIATELY.

THANK YOU FOR BRINGING THIS MATTER TO OUR ATTENTION. IF I CAN BE OF FURTHER ASSISTANCE, PLEASE DO NOT HESITATE TO CALL.

SINCERELY,

A handwritten signature in cursive script, appearing to read "Linda Boyd". The signature is written in black ink and is positioned above the typed name and title.

LINDA BOYD
CUSTOMER RELATIONS DIRECTOR

RECEIVED

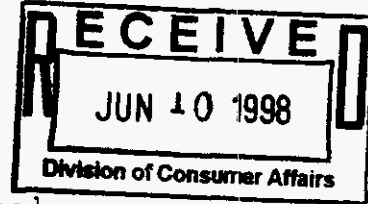
JUN 10 1998

CMU

ATTACHMENT 1698 21
DOCKET NO. 981247-TT
October 22, 1998

June 7, 1998

The Florida Public Service Commission
Division of Consumer Affairs
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-8153



RE: Janet Aaron - Tele: 941-494-9556 - American Nortel

Gentlemen:

On May 11, 1998 I received a letter from my long distance carrier, Excel Telecommunications, Inc., stating, "It is with regret that we have received notification from your local telephone company of your request to remove Excel Telecommunications as your long distance carrier. This request has been processed."

I was shocked and angry as I had not changed my long distance carrier. I immediately called my local telephone company, Sprint. I talked to Linda and explained my problem and she made arrangements to have everything changed back that day. It had been changed over on June 6, 1998. Also I asked her to send me a form to fill out and sign that says there must be a written consent over my signature for my long distance carrier to be changed. I requested the name of the long distance carrier that had taken it upon themselves to change my service. She said she could not give me that information, all she could tell me was that it was a Sprint reseller, that I would have to wait till I received my bill and it would show the company on it. Well I knew we had made at least a couple of long distance calls between the sixth and the eleventh, but I told her if we received any charges from these people we would not pay them as they were unauthorized.

On May 29, 1998 I received my telephone bill. My warning had been heeded by Sprint and there were no charges on the bill from any strange company but also no name as to who had taken over my long distance service surreptitiously. I immediately called Sprint and talked to Stacy who told me she could not tell me who my long distance carrier had been from May 6th through May 11th, but if I would call Sprint long distance they should be able to tell me. I called the number she gave me 1-800-877-4646 and talked to Arisa Blank who told me she was unable to tell me who this L.D. carrier was but if I would call another number 1-800-646-8638 they should be able to tell me. I called this number and reached Lydia Smallwood at Cable and Wireless. When I questioned her she said they were just a processing center for different companies but she gave me another number to call 1-888-371-2052.

The Florida Public Service Commission
Janet Aaron - American Nortel
June 7, 1998
Page Two

When I called this new number on May 29, 1998, I reached Cathy Doyle at American Nortel. I explained that I wanted to know who had authorized them to change my long distance service. She said I must have okayed it with one of their marketing people via a telephone call. I told her no way, to begin with I don't receive marketing calls as my telephone number is on a non-solicitation list with the Florida Department of Consumer Services. The only explanation she would offer was that they had an overzealous marketing department. I told her I was going to report them to the FCC and the Public Service Commission. She seemed very unconcerned and biase. As a footnote she said, "Well there is a Carl Aaron listed at that number too". Yes, there is a Carl Aaron listed in the phone book at the same number, but the telephone is in the name of Janet Aaron and always has been. That told me that they were just pulling names out of the phone book and changing their long distance carriers to American Nortel.

I am not sure what can be done about these people but I hope something as surely they have scammed others as well. The following is the information I have on them:

American Nortel
7201 East Camelback Road
Scottsdale, AZ 85251

Tele: 888-371-2052

Thank you for your help in investigating this company and their business practices.

Sincerely,



Janet Aaron
820 E. Myrtle St.
Arcadia, FL 34266

AMERICAN NORTEL COMMUNICATIONS, INC.
7201 E. CAMELBACK RD, SUITE 320 SCOTTSDALE, ARIZONA 85251 PHONE 602 945-1266 FAX 602 945-1909

SEND VIA FAX

AUGUST 28, 1998

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BLVD
TALLAHASSEE, FL 32399-0850
ATT: ELLEN FLENDL

RE: JUDITH CANNING #2236644I

DEAR MS. FLENDL

WE HAVE ARRIVED AT THE FOLLOWING CONCLUSION REGARDING THE COMPLAINT BY JUTH CANNING.

AMERICAN NORTEL COMMUNICATIONS, INC. (ANC) IS A SWITCHLESS TELECOMMUNICATION COMPANY WHICH PROVIDES LONG DISTANCE SERVICE THROUGHOUT THE UNITED STATES.

IT IS OUR STANDARD PRACTICE TO PROVIDE OUR CUSTOMERS WITH THE BEST POSSIBLE SERVICE AND RESOLVE ISSUES OF IMPORTANCE TO THE CUSTOMER.

OUR RECORD INDICATE THAT THE END USER SAID ACCOUNT SHOWS A BALANCE OF \$295.88 AND CREDIT OF \$132.68 WAS ISSUED ON JULY 29, 1998.

THIS ACCOUNT HAS, HOWEVER BEEN DELETED FROM OUR DATABASE AND A BLOCK HAS BEEN PLACED ON THIS NUMBER, IN OUR SYSTEM.

THANK YOU FOR BRINGING THIS MATTER TO OUR ATTENTION. IF I CAN BE OF FURTHER ASSISTANCE, PLEASE DO NOT HESITATE TO CALL.

SINCERELY,



LINDA BOYD
EXECUTIVE DIRECTOR

AMERICAN NORTEL COMMUNICATIONS, INC.
7201 E. CAMELBACK RD, SUITE 320 SCOTTSDALE, ARIZONA 85251 PHONE 602 945-1266 FAX 602 945-1909

SEND VIA FAX

AUGUST 31, 1998

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BLVD
TALLAHASSEE, FL 32399-0850
ATT: ELLEN PLENDL

RE: CHARLES UTTERBACK #2243031

DEAR MS. PLENDL,

WE HAVE ARRIVED AT THE FOLLOWING CONCLUSION REGARDING THE COMPLAINT BY MR. UTTERBACK

AMERICAN NORTEL COMMUNICATIONS, INC. (ANC) IS A SWITCHLESS TELECOMMUNICATION COMPANY WHICH PROVIDES LONG DISTANCE SERVICE THROUGHOUT THE UNITED STATES.

IT IS OUR STANDARD PRACTICE TO PROVIDE OUR CUSTOMERS WITH THE BEST POSSIBLE SERVICE AND RESOLVE ISSUES OF IMPORTANCE TO THE CUSTOMER.


SAID CUSTOMER SENT US A LETTER IN JULY REGARDING THIS ACCOUNT AND OUR CSR DEPT. MADE AN ADJUSTMENT OF \$31.24, IN ADDITION TO THE \$2.59 ADJUSTED ON MAY 8TH

IT WILL TAKE ONE TO TWO BILLING CYCLES BEFORE THE ADJUSTMENT APPEARS ON THE CUSTOMERS PHONE BILL.

WE HAVE ALSO DELETED SAID CUSTOMER FROM OUR DATABASE AND PLACED A BLOCK ON HIS NUMBER IN OUR SYSTEM

THANK YOU FOR BRINGING THIS MATTER TO OUR ATTENTION. IF I CAN BE OF FURTHER ASSISTANCE, PLEASE DO NOT HESITATE TO CALL.

SINCERELY,



LINDA BOYD
EXECUTIVE DIRECTOR

AMERICAN NORTEL COMMUNICATIONS, INC.
7201 E. CAMELBACK RD, SUITE 320 SCOTTSDALE, ARIZONA 85251 PHONE 602 945-1266 FAX 602 945-1909

SEND VIA FAX

AUGUST 28, 1998

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION
2540 SHUMARD OAK BLVD
TALLAHASSEE, FL 32399-0850
ATT: ELLEN FLENDL

RE: EDGE VISUAL#224821

DEAR MS. FLENDL

WE HAVE ARRIVED AT THE FOLLOWING CONCLUSION REGARDING THE COMPLAINT BY MR. EDGE.

AMERICAN NORTEL COMMUNICATIONS, INC. (ANC) IS A SWITCHLESS TELECOMMUNICATION COMPANY WHICH PROVIDES LONG DISTANCE SERVICE THROUGHOUT THE UNITED STATES.

IT IS OUR STANDARD PRACTICE TO PROVIDE OUR CUSTOMERS WITH THE BEST POSSIBLE SERVICE AND RESOLVE ISSUES OF IMPORTANCE TO THE CUSTOMER.

OUR RECORDS INDICATE CALL DETAIL TOTALING \$35.90. WE HAVE ISSUED A CREDIT IN THE AMOUNT OF \$18.95.

WE HAVE ALSO DELETED SAID CUSTOMER FROM OUR DATABASE AND PLACED A BLOCK ON THE NUMBER IN OUR SYSTEM.

THANK YOU FOR BRINGING THIS MATTER TO OUR ATTENTION. IF I CAN BE OF FURTHER ASSISTANCE, PLEASE DO NOT HESITATE TO CALL.

SINCERELY,



LINDA BOYD
EXECUTIVE DIRECTOR