



# 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-

**DATE:** November 5, 1998

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF LEGAL SERVICES (WATTS) *CBW MCF*  
 DIVISION OF CONSUMER AFFAIRS (DURBIN) *BIP*  
 DIVISION OF COMMUNICATIONS (BIEGALSKI) *CB*

**RE:** DOCKET NO. 971493-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST ALL AMERICAN TELEPHONE, INC. FOR VIOLATION OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER SELECTION.

**AGENDA:** 11/17/98 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\971493.RCM

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 RECORDS AND REPORTING

### CASE 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 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.

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FPSC-RECORDS/REPORTING

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. As the result of many meetings with staff, All American filed a revised offer of settlement on October 2, 1998. (Attachment A, Pages ). Thereafter, on August 24, 1998, All American filed a Second Motion for Further Extension of Time To Respond to Order To Show Cause.

This recommendation will address All American's Motion for Extension of Time and the recent settlement offer.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant All American's Second Motion for Further Extension of Time to Respond to Order to Show Cause?

**RECOMMENDATION:** Yes. The Commission should grant the motion in order to provide All American an opportunity to pursue settlement negotiations with staff. (Watts)

**STAFF ANALYSIS:** In Order No. PSC-98-0268-FOF-TI, issued February 10, 1998, the Commission ordered All American to show cause in writing within 20 days, or by March 2, 1998, why it should not have its certificate canceled or why it should not be fined \$370,000. By letter dated February 11, 1998, All American initiated settlement negotiations with staff to discuss proposed remedial changes to its practices in response to the show cause order. On February 26, 1998, All American filed a Motion for Extension of Time to respond to the show cause order. In its Motion, All American states that a 15 day extension of time would facilitate the negotiation of a settlement. On March 9, 1998, All American submitted a proposed settlement offer to staff. By Order No. PSC-98-1086-FOF-TI, issued August 11, 1998, the Commission denied All American's settlement offer but granted the Motion for Extension of Time.

On August 24, 1998, All American filed a Second Motion for Further Extension of Time to Respond to Order to Show Cause. In this motion, All American requests a 20 day extension of time to

respond to the Commission's decision regarding the latest settlement offer. In light of the recommendation in Issue 2, staff believes that an extension of time is reasonable under these circumstances. All American is seeking additional time to propose another settlement offer if the latest offer is rejected by the Commission.

Therefore, staff recommends that the Commission grant the Second Motion for Extension of Time. All American has filed this motion in order to facilitate its pursuit of a settlement of the apparent slamming violations. Staff believes it is appropriate to encourage the resolution of these matters through settlement negotiations. Should the Commission approve staff's recommendation in Issue 1, All American would have 20 days from the issuance date of this order denying settlement to respond as required to Order No. PSC-98-0268-FOF-TI.

**ISSUE 2:** Should the Commission accept the settlement offer proposed by All American Telephone, Inc. to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection?

**RECOMMENDATION:** No. The Commission should not accept the settlement offer proposed by All American. (Biegalski)

**STAFF ANALYSIS:** On July 21, 1998, staff met with All American to address its concerns regarding the prior settlement offer and the apparent slamming violations. Thereafter, staff had numerous telephone conversations with All American regarding settlement. On October 2, 1998, All American submitted its offer to settle. In its settlement offer All American agreed to do the following:

- All American will agree to suspend marketing of intrastate telecommunications services in the state of Florida for a period not to exceed three years.
- Following the suspension period, All American agrees not to use sweepstakes as a method of marketing telecommunications services.
- In the event All American uses promotional or inducement language following the suspension

period, it will be confined to physically separate or separable documents.

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

Staff supports All American's proposal to cease marketing activities in Florida for a period of three years. Staff believes this will allow All American's new management to review its past marketing techniques and implement changes to reduce consumer complaints. Staff supports All American's tougher stance with its agents. Staff believes this will put its agents on notice that LOAs must be obtained in compliance with the rules of the Florida Public Service Commission. Staff does not support All American's offer to send verification letters to randomly selected persons whose name appears on the LOA. 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. Staff's position would be that if All American wants to send verification letters, if no response is received from the consumer, All American should not process the LOA.

Also, staff 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 settlement. Staff's recommendation specified complaints closed by Consumer Affairs as apparent slamming violations from April 29, 1997 through January 20, 1998. The Order to Show Cause was issued based on this time frame. Since January 20, 1998, the Division of Consumer Affairs has received 326 complaints about All American. Therefore, staff believes that All American's monetary settlement proposal is insufficient.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** No. If staff's recommendation in Issue 2 is approved, this docket should remain open pending the resolution of the show cause proceeding. All American must respond to the original show cause order within 20 days of the issuance of this Order denying the settlement. If All American fails to respond to the Show Cause Order, the fine should be deemed assessed. If All American fails to respond to the Order to Show Cause, and the fines are not received within 5 business days after the expiration of the show cause response period, this docket should be closed administratively. After reasonable collection efforts, the fine should be forwarded to the Comptroller's Office for collection. pending the resolution of the show cause docket. (Watts)

**STAFF ANALYSIS:** If staff's recommendation in Issue 2 is approved, this docket should remain open pending the resolution of the show cause docket. All American must respond to the original show cause order within 20 days of the issuance of this Order denying the settlement. If All American fails to respond to the Show Cause Order, the fine should be deemed assessed. If All American fails to respond to the Order to Show Cause, and the fines are not received within 5 business days after the expiration of the show cause response period, this docket should be closed administratively. After reasonable collection efforts, the fine should be forwarded to the Comptroller's Office for collection.

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October 2, 1998

VIA FAX AND REGULAR MAIL

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CMU

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\* UT BAR ONLY  
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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;

Martha Brown, Esq.  
October 2, 1998  
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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

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