

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against American Nortel Communications, Inc. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

DOCKET NO. 981247-TI  
ORDER NO. PSC-98-1555-SC-TI  
ISSUED: November 23, 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 TO SHOW CAUSE

BY THE COMMISSION:

CASE BACKGROUND

On March 21, 1998, the Commission granted American Nortel Communications, Inc. (Nortel) Certificate number 5336 to provide intrastate interexchange telecommunications service. As a certificated interexchange telecommunications service provider in Florida, Nortel is subject to the rules and regulations of this Commission.

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 assured staff it is in compliance with long distance carrier change rules. In its responses to all consumer complaints, however, Nortel provided no proof of how the PIC changes occurred, and the Letters of Agency (LOAs) designate Nortel as the carrier.

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FPSC-RECORDS/REPORTING

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For these reasons, we initiated a show cause action against Nortel for apparent violations of our rules.

APPARENT VIOLATIONS

Failure to maintain LOAs

Rule 25-4.118(2)(d), Florida Administrative Code,  
Interexchange Carrier Selection, states:

A certified IXC that will be billing in its name may submit a PIC change request...to a LEC only if it has certified to the LEC that at least one of the following actions has occurred prior to the PIC change request:

(d) The IXC has received a customer request to change his PIC and has responded within three days by mailing of an information package that includes a prepaid, returnable postcard and an additional 14 days have past before the IXC submits the PIC change to the LEC. The information package should contain any information required by Rule 25-4.118(3).

The Division of Consumer Affairs requested third party verification [LOA's or Tapes] on each of the complaints. None were provided. Failure to maintain LOA's is an apparent violation of Rule 25-4.118(2)(d), Florida Administrative Code. In its response to Consumer Affairs, Nortel made no attempt to offer proof of any authorization.

Failure to disclose when soliciting a PIC change

Rule 25-4.118(6)(c), Florida Administrative Code,  
Interexchange Carrier Selection, states:

The IXC shall provide the following disclosures when soliciting a change in service from a customer: ... © that the PIC can not be changed unless the customer authorizes the change.

Some customers allege in their complaints that Nortel never contacted them at all, and thus it appears that Nortel is in violation of 25-4.118 (6)(c), Florida Administrative Code.

RULING

Accordingly, by Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our 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. "It 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). We believe that Nortel's conduct in switching PICs without customer authorization has been "willful" in the sense intended by Section 364.285, Florida Statutes.

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), we believe that Nortel does not have adequate safeguards to protect consumers from unauthorized carrier changes. According, we find it appropriate 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.

Nortel shall have 21 days from the issuance of this 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 shall 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. 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 shall be canceled and this docket closed administratively.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that American Nortel Communications, Inc. shall 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. It is further

ORDERED that any response to the Order to Show Cause filed by American Nortel Communications, Inc. Shall contain specific allegations of fact and law. It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, waiver of right to a hearing, and will result in the automatic assessment of the appropriate fine and cancellation of certificate. It is further

ORDERED that in the event American Nortel Communications, Inc. fails to respond to this Order and the fines are not received within five business days after the expiration of the show cause response period, American Nortel Communications, Inc.'s certificate shall be canceled and this docket closed administratively.

By ORDER of the Florida Public Service Commission this 23rd day of November, 1998.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

By: Kay Flynn  
Kay Flynn, Chief  
Bureau of Records

( S E A L )

CBW

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 Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 14, 1998.

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 Records and Reporting, 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.