

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

ORIGINAL

RECEIVED-FPSC

99 FEB -1 PM 4:38

STEPHEN A. ECENIA
JOHN R. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

OF COUNSEL:
CHARLES F. DUDLEY
REPORTING

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

February 1, 1999

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 981247-TI

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of American Nortel Communications, Inc. ("ANC") are the original and fifteen copies of ANC's Amended Response to Order to Show Cause.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,

John R. Ellis
John R. Ellis

- ACK _____
- AFA _____
- APP _____
- CAF 1 _____
- CMU _____
- CTR _____ JRE/rl
- EAG _____ Enclosures
- LEG 1 cc: Parties of Record
- LIN _____ Trib.3
- OPC _____
- RCH _____
- SEC 1 _____
- WAS _____
- DTH _____

RECEIVED & FILED
[Signature]
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

01267 FEB-1 99

FPSC-RECORDS/REPORTING

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

Filed: February 1, 1999

**AMERICAN NORTEL COMMUNICATIONS, INC.'S
AMENDED RESPONSE TO ORDER TO SHOW CAUSE**

American Nortel Communications, Inc. ("ANC"), by and through its undersigned counsel, respectfully submits this amended response to the Order to Show Cause issued on November 23, 1998¹ in these proceedings. In the event that these proceedings cannot be resolved by settlement, ANC requests that the matter be transferred to the Division of Administrative Hearings for a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes and Rule 25-22.0355, Florida Administrative Code. In addition to the matters set forth in its initial response dated December 9, 1998, ANC states:

1. ANC is a certificated interexchange telecommunications service provider in Florida and is subject to the rules and regulations of this Commission.
2. The Order to Show Cause directs ANC to set forth in writing within 21 days the reasons why it should not be fined \$10,000 for each of sixteen apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection. The Order to Show Cause refers to a sweepstakes marketing program by a company listed as GTM Communications ("GTM") as the apparent source of complaints to the Commission of an alleged unauthorized change in the

¹Order No. PSC-98-1555-SC-TI.

DOCUMENT NUMBER-DATE
01267 FEB-1 99
FPC RECORDS/REPORTING

complainant's preferred interexchange carrier.

3. ANC currently does not conduct sweepstakes marketing in Florida, and does not employ GTM to perform marketing services of any kind.

4. ANC has issued credits to the accounts of the sixteen customers whose complaints were closed by the Division of Consumer Affairs as unauthorized carrier change infractions, as referenced in the Order to Show Cause, and has placed a block on the phone numbers of those customers in order to prevent further billing or monthly fees.

5. ANC has ceased marketing activities in Florida until these proceedings are resolved. ANC wishes to resolve these proceedings in a fair and responsible manner consistent with settlements negotiated by the Commission with other carriers charged with similar violations.

6. The Order to Show Cause does not set forth specific facts with respect to any of the sixteen alleged apparent violations. ANC denies that the Order to Show Cause sets forth a legally sufficient basis for the imposition of the sanctions proposed by the Order. ANC reserves the right to further supplement its response to the Order upon specification by the Commission of the factual basis for the proposed imposition of sanctions.

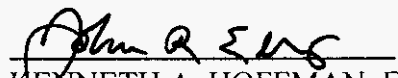
7. Section 364.285, Florida Statutes, authorizes the Commission to impose sanctions for a willful violation of the Commission's rules or orders. ANC denies that there is competent, substantial evidence of a willful violation of any statute or Commission rule or order by ANC or by any employee or agent of ANC acting within the scope of such employment or agency, as "willful" is defined in Florida law: "... that the actor has intentionally done an act of unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow...." Metropolitan Dade County v. State Department of Environmental Protection, 714

So.2d 512, 516-517 (Fla. 3rd DCA 1998). ANC denies, for example, that fraudulent conduct by an independent contractor acting outside the scope of authority extended by ANC could serve as a basis for a finding of a willful violation by ANC of Rule 25-4.118.

8. By filing this amended response, ANC does not admit to any violation of any statute, Commission rule or order. In the event that these proceedings cannot be resolved by settlement, ANC requests that the matter be transferred to the Division of Administrative Hearings for assignment to an Administrative Law Judge to conduct a formal administrative hearing to resolve the disputed issues of fact and issues of law raised in the Order to Show Cause.

Respectfully submitted this 1st day of February, 1999.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQ.

JOHN R. ELLIS, ESQ.

Rutledge, Ecenia, Purnell & Hoffman, P.A.

P. O. Box 551

Tallahassee, FL 32302

(850) 681-6788 (telephone)

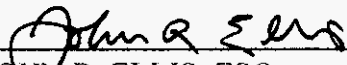
(850) 681-6515 (telecopier)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery this 1st day of February, 1999 to the following:

Clintina Watts, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Charles Beck, Esq.
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400



JOHN R. ELLIS, ESQ.

Nortel3.res