



## Public Service Commission

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**DATE:** February 5, 1999  
**TO:** Records and Reporting  
**FROM:** Kelly Biegalski, Division of Communications  
**RE:** Docket No. 971493TI; All American Telephone, Inc.

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Please place the attached correspondence in the docket file.

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01561 FEB-58

FPSC-RECORDS/REPORTING

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October 22, 1998

VIA FAX AND OVERNIGHT MAIL

Martha Carter Brown, Esq.  
 Legal Division  
 Florida Public Service Commission  
 2540 Shumard Oak Boulevard  
 Tallahassee, Florida 32399-0850

Re: Docket No. 971-33-11 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:

Please be advised that this law firm has terminated its representation of All American Telephone, Inc. in the above-captioned show cause proceeding. Accordingly, we are withdrawing from this matter effective immediately. All future communications regarding this matter should be directed to the following:

W. Steven Walker, Esq.  
 729 Grapevine Highway  
 No. 159  
 Hurst, Texas 76054  
 ph. (817) 281-3715  
 fax (817) 485-3320.

Sincerely,

  
 Mitchell F. Brucher

cc: Ms. Kelly Bielskiy  
 W. Steven Walker, Esq.

80-023.10282

This information is written to offer some insight into the past, present and future conduct of All American Telephone, Inc. (AAT), Preferred Carrier Services, Inc. (PCS) and Mr. Nelson Thibodeaux. AAT and PCS are both switchless rebilers operating in the State of Florida.

As you know, AAT and PCS are involved in "Show Cause" proceedings in the State of Florida; AAT was also recently fined \$1,040,000 by the FCC for various slamming violations occurring over the past several months. In addition, AAT and PCS have received numerous complaints of slamming and/or slamming violations in other states, including Connecticut, New York, Ohio, and Pennsylvania. All of these complaints stem from the sweepstakes/box marketing programs that these companies utilize to gain customers.

Turn-4 Communications and PCSi (Internet WWW Home Page: <http://www.pcs-tele.com>) are the successor or spin-off companies to PCS (and/or Phones for All). They are both owned and operated by Mr. Nelson Thibodeaux. Mr. Thibodeaux is the husband of Jamie Thibodeaux, who is a part owner of All American Telephone, Inc. and the previous sole owner of PCS. Mrs. Thibodeaux's ownership in these companies served to circumvent various restrictions imposed on Mr. Thibodeaux from prior business and/or regulatory dealings.

Mr. Thibodeaux, a recently elected Councilman to the City of Colleyville, Texas, is no stranger to companies involved with sweepstakes/box marketing, i.e., AAT, PCS, Winstar and TWT. Via Turn-4 Communications, he manages the day to day affairs of AAT (Mr. Thibodeaux has very little involvement in these operations). Mr. Marc Troop, an employee of Turn-4 (and Mr. Thibodeaux), serves as president of AAT, and is now revitalizing AAT's sweepstakes/box marketing program in the State of Florida and elsewhere throughout the country. Word on the street has it that this renewed exercise will last only three months (we can only speculate why - might he be planning to collect money from unsuspecting customers, distribute the money to himself and/or other companies in his control, then bankrupt AAT before it incurs the bad debt, chargebacks, recourse adjustments, and/or credits that are associated with his mendacious activities). Isn't it also ironic that Mr. Thibodeaux is negotiating a settlement with the PSC and FCC to curb and/or end these activities!

Mr. Thibodeaux was also recently forced to changed AAT's underlying carrier from US Long Distance to DXC Communications (AAT is delinquent in paying USLD for an estimated \$2.7 million for line charges). In doing so, approximately 80,000 unsuspecting customers were switched (again), and approximately 80,000 customers incurred a switching fee (again). Rumor has it that 30,000 of those 80,000 customers were subscribers to AAT's personal 800 program, not its long distance (i.e., 30,000 customers were slammed!).

**MR. THIBODEAUX IS A CRIMINAL.** He hides behind his wife, his employees, the companies that he controls and the public office that he holds. He needs to be exposed. His intentions are clearly evidenced by his willfull deceit of the public. He makes millions not only at the expense of the defrauded customer, but also at the expense of the taxpayers who pay who support the institutions that deal with his type of activities. The state and federal authorities, including the offices of the PSC, the FCC and the Attorney General, should further investigate Mr. Thibodeaux.

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**FACSIMILE TRANSMITTAL SHEET**


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<b>TO:</b> Kelly Biegalski	<b>FROM:</b>
<b>COMPANY:</b> FL Public Service Commission	<b>DATE:</b> 08/26/98
<b>FAX NUMBER:</b> (805) 487-1716	<b>TOTAL NO. OF PAGES INCLUDING COVER:</b> 2
<b>PHONE NUMBER:</b> (805) 413-6546	<b>SENDER'S REFERENCE NUMBER:</b>
<b>RE:</b> Mr. Nelson Thibodeaux All American Telephone, Inc. Preferred Carrier Services, Inc.	<b>YOUR REFERENCE NUMBER:</b> Company Code T1575 - Cert. 4790 Company Code T1458 - Cert. 4407

URGENT   
  FOR REVIEW   
  PLEASE COMMENT   
  PLEASE REPLY   
  PLEASE RECYCLE

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**NOTES/COMMENTS:**

I'm told that you might be familiar with one or more of the subject parties. If not, please pass this information on to someone who might be interested in it. Thank you.

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October 2, 1998

VIA FAX AND REGULAR MAIL

RECEIVED

OCT 06 1998

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Martha Brown, Esq.  
Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

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;

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 charges 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 Diegalaky~~

**FLEISCHMAN AND WALSH, L.L.P.**

ATTORNEYS AT LAW

1400 SIXTEENTH STREET, N.W.,  
WASHINGTON, D. C. 20036

**Ms. Kelly Biegalsky**

FEISCHMAN AND WALSH, L. I. P.

ATTACHMENT A  
DOCKET NO. 971493-TI  
SEPTEMBER 10, 1998

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July 24, 1998

VIA FAX AND OVERNIGHT MAIL

Martina Brown, Esq.

Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Docket No. 971493-TI - In re initiation of show cause proceedings against  
All American Telephones, Inc. for violations of Rule 25-4.118, F.A.C.  
Interchangeable Carrier Selection

Dear Ms. Brown:

On behalf of my client, All American Telephone, Inc, and its recently-appointed new management thank you for taking the time to meet with Steven Walker of All American and myself following the Commission's agenda conference to continue our efforts to resolve the pending show cause proceeding in a fair and equitable manner. During our discussion, it became apparent that some confusion may have arisen regarding All American's settlement proposals as reflected in my letters dated March 9, 1998 and June 19, 1998. In the March letter, All American proposed to make a voluntary contribution to the State Treasury in the amount of \$18,000 and to implement a series of changes in its sales, marketing and customer verification practices. Those changes were intended to reduce -- and hopefully eliminate -- the incidence of complaints which had resulted from All American's use of marketing methods which included sweepstakes promotions. In the June letter, All American proposed to increase its voluntary contribution to the State Treasury to \$32,400, and to completely eliminate the use of sweepstakes or contest promotions.

By offering to eliminate sweepstakes, it was All American's intention to discontinue the marketing practices which the PSC staff had indicated that it to be found most objectionable. All American made this offer despite the fact that no provision of the Commission's rules then in effect or now in effect prohibit sweepstakes. Lest there be any misunderstanding, it was not All American's intent to offer to discontinue sweepstakes in lieu of the other sales, marketing and verification changes described in the March letter.

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Martha Brown, Esq.  
July 24, 1998  
Page 2

As described below, All American remains willing to implement each of the changes contained in its March settlement offer which remain relevant in light of its cessation of sweepstakes and to discontinue use of sweepstakes and contest promotions. By this letter, All American reiterates each of the non-monetary aspects of its proposal to settle all complaints filed with the PSC against All American and modifies the monetary aspect of its settlement proposal as described below.

#### I. Changes to Sales, Marketing and Verification Practices

**A. Revised Letter of Agency** -- All American will revise the letter of agency (LOA) form which it uses to solicit Primary Interexchange Carrier (PIC) orders in the State of Florida so that All American's LOA complies fully with every requirement governing LOAs codified at Rule 25.4-118(3). Specifically, all wording on the LOA required by the rule will be clearly legible and in type size as large as any other text on the LOA document. In addition, the name of the company, ALL AMERICAN TELEPHONE, INC, along with the wording LONG DISTANCE APPLICATION and LETTER OF AGENCY are to be printed at the top of the LOA. As a result of these changes, there should be no misunderstanding as to what the document is -- a long distance application/letter of agency, or as to whom customers filling out the LOA will be selecting as their presubscribed interexchange carrier or who they are selecting as their agent to effectuate that selection -- All American Telephone.

As you may recall, the LOA described in our March letter was a perforated document with the LOA portion of the document clearly identified and physically separable from the contest rules and contest entry portion of the document. Since All American will not be engaging in marketing using sweepstakes, it will no longer be necessary to use a perforated document. Please be assured however that All American's LOA will contain no inducement or other promotional language. Any promotional or inducement language, if used by All American in its marketing efforts, will be confined to physically separate or separable documents -- either separate pieces of paper or portions of the LOA document which are separated from the LOA by perforations.

**B. Revised Agent Agreement** -- All American understands that irrespective of what marketing methods are utilized to promote its interexchange telecommunications services, it is solely responsible to the public and to the PSC for the conduct of all persons who engage in sales solicitation efforts on its behalf, that this ultimate responsibility may not be delegated to independent sales and marketing agents, and that it will be held accountable for behavior by such independent representatives which violate Commission rules and policies. Neither All American nor any other company can totally control the conduct of those who market services on its behalf. However, All American believes that it can contractually obligate its agents and representatives to represent it and its services in conformance with applicable legal and regulatory requirements and in a manner consistent with reasonable commercial practices. All American also believes that it can deter improper conduct by agents by imposing on its agents specific requirements and harsh consequences for failure to adhere to those requirements.

Martha Brown, Esq.  
July 24, 1998  
Page 3

To this end, All American has developed a new sales and marketing agreement which it will require all agents to execute as a precondition to representing All American in Florida. A copy of that agreement was provided to you with our March letter. For your convenience, another copy of the revised All American agent agreement is enclosed herewith. In reviewing this revised agent agreement, we direct your attention to several aspects of the agreement. Section 4(e) requires agents only to utilize LOAs specifically approved by All American and which comply with all Federal Communications Commission and state public service commission requirements applicable to LOAs. Section 4(b) entitles All American to reject any customer order submitted for any reasonable cause, including failure to produce a properly-executed and legible LOA which conforms with all applicable LOA requirements. Moreover, this section places agents on notice that they will not be entitled to compensation for orders rejected by All American. Section 4(c) imposes on agents liability to All American for submission of LOAs which are determined not to be lawful or which have been obtained in any unethical, misleading or deceptive manner.

Section 5 imposes on agents the duty to at all times conduct their duties and obligations under the agreement in a professional and ethical manner and in full conformance with all applicable legal and regulatory requirements. In other words, the obligations of All American to comply with legal and regulatory requirements, including those imposed by the Florida PSC, now will be the contractual obligations of its agents as well.

Section 6 prohibits agents from using any promotional materials in connection with the marketing of All American's services unless those materials have been expressly approved by All American. This requirement is applicable to all printed and promotional materials including newspaper and magazine advertisements, direct mail materials, and LOAs. Although All American no longer will be involved in contests or sweepstakes, all other promotional materials used to market All American services will be subject to this requirement.

Finally, your attention is directed to Section 10 of the agreement entitled Default and Termination. That section affords each party an opportunity to cure material breaches of the agreement before termination for breach. However, Section 10(b) expressly excludes from agents' opportunity to cure breaches any breach which constitutes a violation of any applicable legal or regulatory requirement governing LOAs, customer solicitations, or PIC changes. As we stated in the March settlement offer letter, this "one strike and you are out" provision is intended to reflect All American's Zero Tolerance Policy for agent conduct which causes such violations.

C. **Sample Verification** - 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 after sending those letters before submitting the customers' names to local exchange carriers to change the customers' PIC selections. The purpose for this "spot check" verification process is to ensure that names on LOAs match the customer of record names for the telephone numbers which appear on LOAs. Consistent with other settlement agreements approved by the Commission, for the first year following

Martha Brown, Esq.  
July 24, 1998  
Page 4

approval of this agreement, All American will verify fifty percent of the LOAs obtained by it from Florida consumers. Following that one year period, for an additional six month period, All American will verify twenty-five percent of LOAs obtained from Florida consumers.

## II. Voluntary Contribution

By this letter, All American hereby revises its offer to make a voluntary contribution to the State Treasury by offering to make payments totaling \$50,000. It would make an initial payment in the amount of \$10,000 at the time that a settlement agreement is approved by the Commission. It would then make ten monthly payments each in the amount of \$4,000. In considering the voluntary contribution aspect of this proposal, it should be noted that this amount represents a substantial increase over the amount offered in our June 19 letter. It also is important to consider the following relevant factors: 1) All American is a new entrant in the Florida marketplace, having only become authorized to provide service in February 1997; 2) All American is an accused first time offender, never before having been cited by the Commission for unauthorized PIC change violations or any other rule violation; 3) All American's intrastate revenues for 1997 totaled only \$568,650, far less than the revenues reported by other companies. Nonetheless, the amount offered by All American compares favorably with settlement payment amounts approved by the Commission for several far larger carriers, including several with histories of repeated non-compliance.

All American submits this settlement proposal as a good faith effort to resolve the pending show cause proceeding and to move forward as a provider of high quality, reasonably priced services in Florida's increasingly competitive telecommunications marketplace. This is All American's third attempt to submit a proposal which the PSC Staff will find satisfactory and to worthy of recommendation to the Commission for approval. It is my hope and that of my client that this third offer will be deemed satisfactory. I look forward to discussing this offer with you and your colleagues in the near future. If there are any questions regarding this proposal, please communicate with undersigned counsel.

Sincerely,



Mitchell F. Brecher  
Counsel for All American Telephone, Inc.

Enclosure

cc: Ms. Kelly Biegalsky  
Mr. Richard Moses  
Mr. Richard Durbin  
Mr. W. Steven Walker

0139.L0002

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**FACSIMILE TRANSMITTAL SHEET**

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TO : MARTHA CARTER BROWN, ESQ.  
MS. KELLY BIEGALSKY  
FLORIDA PSC

FAX NO.: 850-413-6205

FROM: MITCHELL F. BRECHER

DATE/TIME: October 22, 1998

CLIENT NUMBER: 0952.9999

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 2

MESSAGE:

Reply fax numbers: Regulatory Group (202) 667-8543

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(202) 939-7839.

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March 9, 1998

VIA OVERNIGHT MAIL

William Cox, Esq.  
Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0050



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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 Mr. Cox:

The purpose of this letter is to set forth a proposal for settlement of the above-captioned show cause proceeding initiated by the Commission against my client, All American Telephone, Inc., by Order No. PSC-98-0268-FOF-TI, issued February 10, 1998. In that Order, the Commission has ordered All American to show cause why it should not be fined for violations of the Commission's rule governing changes to interexchange carrier selections.

After carefully reviewing the order to show cause and discussing this matter with my client, I have been authorized to make the following settlement proposal. The proposal consists of two parts. The first part of the proposal includes changes to All American's sales and marketing, letter of agency, and customer verification practices designed to prevent consumers from having their presubscribed interexchange carrier selections changed without their consent. The second part of the proposal is an offer by All American to make a voluntary contribution to the State Treasury.

Part 1-- Changes to Sales, Marketing, and Customer Verification Practices

A. Revised Display Sign - All American will revise the display signs used in connection with its sweepstakes promotion. The revised display sign will prominently include the following language in block letters: "SIGN UP FOR ALL AMERICAN TELEPHONE LONG DISTANCE

**SERVICE OR PERSONAL 800 NUMBER.**" Inclusion of this language on the display sign will indicate clearly to consumers who see the display that the display is not merely an invitation to enter a contest in which a prize (e.g. a car) is to be awarded. Rather, it will inform consumers that they are being solicited to sign up for All American's long distance service. We believe that by highlighting to consumers that they are being solicited to sign up for long distance telephone service, the revised display sign in combination with All American's letter of agency (see below) will conform fully with Rule 25.4-118(4) which requires that documents used with letters of agency to request customers to change their presubscribed interexchange carriers (PIC) "as a whole may not be misleading or deceptive." A copy of All American's proposed revised display sign is attached hereto at Attachment A.

B. Revised Letter of Agency - All American will revise the letter of agency (LOA) form used to solicit PIC changes in the State of Florida. A copy of the revised LOA is attached hereto as Attachment B. In reviewing this revised LOA form, I direct your attention to several features of the revised form. First, the revised form is a perforated form. The portion of the form to the right of the perforation is to be filled out by those persons who wish to enter the contest to win the prize being offered by All American, but who do not wish to change their PIC long distance carrier. That section, entitled "Entry & Contest Rules," includes the following language: "You are not required to sign the application for long distance service to enter the contest." This language is important since it clearly and unequivocally informs consumers that they may enter the contest without signing the LOA and without changing their long distance carrier. This language is consistent with the display box which states "No purchase necessary." As a result of the changes to the LOA and the language on the display box, consumers will be clearly informed that they need not sign a LOA or agree to change their long distance service in order to enter the contest.

All American's revised LOA contains several other changes which will bring it into full compliance with the requirements governing LOAs codified at Rule 25.4-118(3). Specifically, all wording on the LOA required by the rule is clearly legible and is printed in type size as large as any other text on the document. In addition, the name of the company, ALL AMERICAN TELEPHONE, INC., along with the wording LONG DISTANCE APPLICATION and LETTER OF AGENCY are printed at the top of the LOA. As a result of these changes, there should be no misunderstanding as to what this document is -- a long distance application/ letter of agency, or as to whom consumers will be selecting for their long distance service or who they are authorizing to act as their agent to effectuate that selection -- All American Telephone.

C. Revised Agent Agreement - All American understands that it is ultimately responsible to consumers and to the Commission for the conduct of all persons who engage in sales solicitation efforts on its behalf, including independent sales and marketing agents. In order to ensure that its agents understand the requirements of selling service on All American's behalf, and to hold agents accountable for their sales and marketing practices, All American has revised its agent agreement.

All of its agents will be required to execute this revised agreement in order to represent All American in the State of Florida. A copy of All American's revised agent agreement is attached hereto as Attachment C. Several provisions of the revised agreement are particularly important in this regard. Section 4(a) requires agents only to utilize LOAs specifically approved by All American and which comply with all Federal Communications Commission and state public service commission regulations applicable to LOAs. Section 4(b) entitles All American to reject any customer order submitted to it for any reasonable cause, including failure to produce a properly-executed and legible LOA which conforms with all applicable LOA requirements. Moreover, this paragraph places agents on notice that they shall not be entitled to compensation for orders rejected by All American. Section 4(c) imposes on agents liability to All American for submission of LOAs which are determined not to be lawful or which have been obtained in any unethical, misleading or deceptive manner.

Section 5 of the revised agent agreement imposes on agents the duty to at all times conduct their duties and obligations under the agreement in a professional and ethical manner and in full conformance with all applicable legal and regulatory requirements. In other words, the obligations of All American to comply with legal and regulatory requirements and to operate ethically now will be the contractual obligations of its agents as well.

Section 6 prohibits agents from using any promotional materials in connection with the marketing of All American's services unless those materials have been expressly approved by All American. This requirement is applicable to all printed and promotional materials including newspaper and magazine advertisements, direct mail materials, contest displays and LOAs. Finally, your attention is directed to Section 10 of the revised agent agreement (Default and Termination). Although that section affords each party an opportunity to "cure" material breaches of the agreement before termination of the agreement for breach, Section 10(b) expressly excludes from agents' opportunity to cure breaches any breach which constitutes a violation of any applicable legal or regulatory requirement governing LOAs, customer solicitations, or PIC changes. This "one strike and your out" provision is intended to reflect All American's Zero Tolerance Policy for agent conduct which results in such violations.

D. Sample Verification - Although not required by any existing or proposed rule, All American will send verification letters to randomly-selected persons whose names appear on LOAs obtained by All American. All American will wait two weeks after sending those verification letters before submitting the customers' names to local exchange carriers to change the customers' PIC selections. The purpose for this "spot check" verification process is to ensure that names on LOAs match the customer of record names for the telephone numbers which appear on those LOAs.

So far as All American is aware, no other interexchange carrier operating in the State of Florida has proposed sales and marketing, LOA, and verification practices as comprehensive as those described in the preceding paragraphs. We are confident that these practices when implemented, will

what to  
and for how  
1-7

prevent improper carrier changes from occurring, and that these practices will establish standards which will become a model for the interexchange telecommunications industry throughout the State of Florida.

## Part 2 -- Voluntary Contribution

In addition to the changes to sales, marketing, LOA, and verification practices described above, All American hereby offers to pay a voluntary contribution to the State Treasury in the amount of \$18,000. The order to show cause issued in this proceeding proposes to fine All American \$10,000 per violation. Although the show cause order asserts that 37 complaints have been "closed" by the Commission's Division of Consumer Affairs, not one of those "closed" cases has involved a determination based upon record evidence that any law or regulation has been violated. Whether it could be proven in an evidentiary hearing that each of those "closed" cases constituted unlawful conduct engaged in by All American is at best questionable. Moreover, to proceed to hearing would require that both the Commission Staff and All American expend considerable time and other resources. By offering to make a voluntary contribution, it is All American's hope that Staff and the Commission, as well as All American, would achieve a result which benefits the ratepayers and taxpayers of the State of Florida while avoiding the costs and time associated with the hearing process.

We believe that the contribution amount offered by All American is a reasonable and appropriate amount for several reasons. First, All American is a new company, having become authorized to provide intrastate service in Florida in February 1997, just over one year ago. The proposed voluntary contribution represents a significant portion of the revenues derived from All American's Florida business. Second, unlike several other companies under investigation by the Commission, All American has never been the subject of any Commission enforcement action. Third, All American has been consistently forthcoming and cooperative with the Commission Staff and has endeavored to work with Staff to identify and to implement practices which will prevent consumers from having their long distance carrier selections changed without their express and informed consent. These cooperative efforts are reflected in the proposed changes to All American's sales and marketing, LOA, and verification practices described above. All American is unaware of any other carrier which has proposed such significant changes to its operations or which has sought the active involvement of Staff in formulating such changes.

In addition, the voluntary contribution offered by All American is substantial when considered in comparison with previous Commission enforcement actions involving alleged violations of the carrier selection rules. By this proposal, All American is offering to pay to the State Treasury \$500 per complaint "closed" by the Division of Consumer Affairs. A review of similar cases which have been settled indicates that the Commission approved settlements in those cases for significantly lower



William Cox, Esq.  
March 9, 1998  
Page 5

amounts, despite the fact that those cases involved carriers much larger than All American with much greater resources, involved conduct which continued for far longer periods of time, and which involved many more complaints. For example, Commission records indicate that a case against Excel Communications was settled for \$286 per closed complaint; a case against Heartline Communications was settled for \$183 per complaint (even though the complaints were received over a two and one-half year period); MCI, for \$260 per closed complaint. A case against AT&T, by far the largest and most experienced interexchange carrier, was settled for \$71.42 per closed complaint. Importantly, several of those carriers are subject to further investigation by the Commission which indicates that those settlements, unlike that proposed by All American, did not involve implementation of significant changes to those companies' sales and marketing, LOA and verification procedures.

In closing, All American shares the Commission's concern about slamming in the State of Florida and supports the Commission's and Staff's efforts to eliminate unauthorized carrier selection changes. All American believes that practices like those proposed herein, along with promulgation by the Commission of explicit rules governing the carrier selection process -- and enforcement of those rules, will hasten the long overdue demise of slamming in Florida. By offering to make the changes described herein, and to make a voluntary contribution in the amount of \$18,000 to the State Treasury, All American has demonstrated its good faith efforts to work with Staff and the Commission and to move forward in its efforts to eliminate complaints against it. For all of the reasons explained in this letter, All American respectfully urges the Commission to accept this settlement offer.

If there are questions regarding any aspect of this offer, please contact the undersigned counsel for All American.

Sincerely,



Mitchell F. Brecher

Enclosures

73939.1/0952

**ENTER TO WIN**

**A NEW**



**CAR**

**OR**

**\$20,000**

**CASH**

**SIGN UP FOR  
ALL AMERICAN  
TELEPHONE**

**LONG  
DISTANCE  
SERVICES**

**OR**

**PERSONAL,  
800 NUMBER**

**No purchase necessary-Official rules on side of box**

DIST #

YOU MUST BE AT LEAST 18 YEARS OF AGE TO COMPLETE THIS FORM

LONG DISTANCE SERVICE APPLICATION  
LETTER OF AGENCY  
PLEASE PRINT - FILL OUT COMPLETELY  
ONLY ONE PER HOUSEHOLD

DATE (REQUIRED) \_\_\_\_\_ KMI-WAC \_\_\_\_\_  
NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
HOME PHONE (REQUIRED) ( ) - - - - -

I CERTIFY THAT I AM AT LEAST 18 YEARS OF AGE. THE PHONE NUMBER/S LISTED ON THIS APPLICATION ARE LISTED IN MY NAME AND/OR I AM AUTHORIZED TO CHANGE THE LONG DISTANCE SERVICE. I HEREBY AUTHORIZE ALL AMERICAN TELEPHONE, INC. (AAT) TO ACT AS MY AGENT, AND TO CONVERT THE LONG DISTANCE SERVICE ON MY PHONE LISTED ABOVE FROM MY CURRENT CARRIER TO AAT. I UNDERSTAND THAT THIS LOA CHANGES MY CARRIER, AND I MAY DESIGNATE ONLY ONE CARRIER AT A TIME FOR ANY ONE NUMBER. I UNDERSTAND THAT MY LOCAL PHONE COMPANY MAY ASSESS A CHARGE FOR MY CONVERSION TO AAT. IF THIS OCCURS, AAT WILL CREDIT MY ACCOUNT IF I SEND A COPY OF MY BILL TO: AAT, P.O. BOX 275, HURST, TX 76053.

SIGNATURE (REQUIRED) X \_\_\_\_\_

DIST #

YOU MUST BE AT LEAST 18 YEARS OF AGE TO COMPLETE THIS FORM

LONG DISTANCE SERVICE APPLICATION  
LETTER OF AGENCY  
PLEASE PRINT - FILL OUT COMPLETELY  
ONLY ONE PER HOUSEHOLD

DATE (REQUIRED) \_\_\_\_\_ KMI-WAC \_\_\_\_\_  
NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
HOME PHONE (REQUIRED) ( ) - - - - -

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SIGNATURE (REQUIRED) X \_\_\_\_\_

DIST # \_\_\_\_\_

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TO COMPLETE THIS FORM

ALL AMERICAN TELEPHONE, INC.  
LONG DISTANCE SERVICE APPLICATION  
LETTER OF AGENCY  
PLEASE PRINT - FILL OUT COMPLETELY  
ONLY ONE PER HOUSEHOLD

DATE (REQUIRED) \_\_\_\_\_ GMT

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

HOME PHONE (REQUIRED) (\_\_\_\_) \_\_\_\_\_

I CERTIFY THAT I AM AT LEAST 18 YEARS OF AGE. THE PHONE NUMBERS LISTED ON THIS APPLICATION ARE LISTED IN MY NAME AND/OR I AM AUTHORIZED TO CHANGE THE LONG DISTANCE SERVICE. I HEREBY AUTHORIZE ALL AMERICAN TELEPHONE, INC. (AAT) TO ACT AS MY AGENT, AND TO CONVERT THE LONG DISTANCE SERVICE ON MY PHONE LISTED ABOVE FROM MY CURRENT CARRIER TO AAT. I UNDERSTAND THAT THIS LDA CHANGES MY CARRIER, AND I MAY DESIGNATE ONE (1) NEW CARRIER AT A TIME FOR ANY ONE NUMBER. I UNDERSTAND THAT MY LOCAL PHON COMPANY MAY ASSESS A CHARGE FOR MY CONVERSION TO AAT. IF THIS OCCURS, AAT WILL CREDIT MY ACCOUNT IF I SEND A COPY OF MY BILL TO AAT, P.O. BOX 275, HEURST, TX. 76021

SIGNATURE (REQUIRED) \_\_\_\_\_

Entry & Contest Rules

Please Print your name and phone number below for a chance to win a new car or \$20,000 cash (your choice). You must be at least 18 years of age to enter. Only 1 entry per family. You are not required to sign the application for long distance service to enter the contest. You do not need to be present to win. Odds dependent upon number of entries. Drawing to be held on May 31, 1998, and then on May 31st of subsequent years (until terminated by GMT). Employees of GMT and their families are ineligible. Federal, State and local taxes are the sole responsibility of the winner.

Offer void where prohibited by law.

Name \_\_\_\_\_

Phone # (\_\_\_\_) \_\_\_\_\_

**ALL AMERICAN TELEPHONE, INC.****AGENT AGREEMENT**

This Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 19\_\_ by and between All American Telephone, Inc., a corporation organized under the laws of the State of Texas ("AAT"), and \_\_\_\_\_ ("Agent").

**WITNESSETH**

WHEREAS, AAT is a duly authorized telecommunications carrier and is engaged in the business of providing certain telecommunications services, including interexchange services, to the public; and

WHEREAS, AAT, subject to the terms and conditions set forth in this Agreement, desires to grant to Agent, and Agent desires to accept from AAT, the right to solicit customers on behalf of AAT for the purchase of telecommunications services provided by AAT.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the parties do hereby contract and agree as follows:

**1. Appointment of Agent**

Agent hereby grants to Agent the right to solicit customers on behalf of AAT for the purchase of telecommunications services provided by AAT. Agent's authority shall be limited to offering only those services approved by AAT, subject to the terms and conditions herein set forth.

**2. Territory**

Agent shall have the right to solicit customers on behalf of AAT only within those states and/or territories approved by AAT.

**3. Term**

This Agreement shall commence on the date of execution or the earliest date Agent submits to AAT orders for services, whichever is later ("Commencement Date"), and shall continue in full force and effect for a minimum period of one (1) year unless terminated in accordance with paragraph 8 of this Agreement, and shall automatically be renewed for successive periods of one (1) year unless terminated by written notice from either party to the other not less than sixty (60) days prior to the scheduled expiration date.

**4. Orders for Services**

(a) Agent shall submit to AAT order for AAT service obtained from customers in a manner and/or on forms approved in advance by AAT for Agent's use in obtaining customer orders. Unless agreed to otherwise, every customer order submitted to AAT by Agent shall be accompanied by a Letter of Agency ("LOA") properly executed by the prospective customer. Such LOA shall be on a form specifically approved by AAT and shall comply in all material respects with all applicable legal requirements for LOAs, including any rules established by the

Federal Communications Commission ("FCC") and any state public service commission in any state in which Agent has been authorized by AAT to solicit customers. All LOAs submitted by Agent to AAT shall become the exclusive property of AAT and shall only authorize AAT to act as customer's agent in arranging with customers' local exchange telephone carrier ("LEC") for AAT to become the customer's Presubscribed Interexchange Carrier ("PIC").

(b) AAT may reject any customer order submitted to it by Agent for any reasonable cause, including, but not limited to, Agent's failure to provide to AAT a properly executed and legible LOA which, in AAT's best judgment, conforms with all applicable legal requirements governing LOAs. Notwithstanding any other provisions of this Agreement, Agent shall have no right to compensation from AAT for orders rejected by AAT pursuant to this paragraph.

(c) In the event any LOA submitted by Agent to AAT shall be deemed not to be valid by a LEC or any federal or state court or regulatory body with authority over interexchange telecommunications services, either because of forgery or because the LOA has been obtained in an unethical, misleading or deceptive manner, or is in any other respect unlawful, then Agent shall be fully liable to AAT for any and all resulting costs, including monetary fines, or other expenses associated therewith.

## 5. Duties and Obligations

### A. Agent

Agent shall have the following duties and obligations:

- (i) To solicit interexchange telecommunications service customers exclusively for AAT;
- (ii) To submit to AAT all orders and/or executed LOAs immediately upon receipt by Agent. Agent shall submit same in some organized manner (i.e. banded by sub-agent and/or batch);
- (iii) To at all times conduct its duties and obligations under this Agreement in a professional and ethical manner, and in full conformance with all applicable legal and regulatory requirements.

In addition to the foregoing duties and obligations, Agent agrees to cooperate with AAT to the fullest extent possible and to the best of Agent's ability to facilitate the provisioning of services provider hereunder.

### B. AAT

AAT shall have the following duties and obligations:

- (i) To facilitate the provisioning of telecommunications services for customers procured for it by Agent;
- (ii) To arrange for billing and collection for services provided to customers;
- (iii) To provide customer service;

- (iv) To provide Agent with adequate reports to conduct its business affairs.

Each party is responsible for its own costs and expenses associated with its respective duties and obligations under this Agreement, subject to the terms and conditions expressed herein.

## **6. Use of Promotional Material**

Agent shall not distribute or otherwise utilize any printed or other promotional material including, but not limited to, newspaper or other periodical advertisements, direct mail materials, brochures, contest displays, or LOAs, unless those materials have been expressly approved for use by AAT.

## **7. Agent Compensation**

### **A. Commissions**

Agent shall be entitled to commissions equal to \_\_ percent of the monthly gross revenues generated from Agent's subscribers, payable on or before the 10th day of each month. All commissions shall be subject to adjustments resulting from bad debt incurred from customers procured for AAT by Agent, including that resulting from off-net usage, unbillable records, rejected records, uncollectible amounts and post-billing adjustments or credits provided to customers. In the event that bad debt incurred from Agent's subscribers exceeds Agent's commission, payments of Agent's monthly commissions shall be suspended until such time as Agent's commissions have accrued to sufficient levels to offset said bad debt.

### **B. Other Compensation**

In addition to the commissions described in the preceding paragraph, Agent shall be entitled to compensation equal to \$ \_\_ per order and/or LOA submitted by Agent and accepted by AAT, subject to adjustments resulting from orders and PICs rejected. Such compensation shall be payable weekly following the data entry, provisioning and filing of all LOAs.

## **8. Independent Contractor**

Agent is and shall continue to be an independent contractor and is not a legal representative of or employee of AAT for any purpose whatsoever. This Agreement shall not create, nor shall it be construed to create a joint venture, partnership, franchise agreement or any other type of employment relationship between Agent and AAT. Agent has no authority to make any warranties or representations on behalf of AAT without the prior written consent of AAT.

## **9. Indemnification**

Agent shall indemnify and hold AAT harmless from any and all claims, damages or judgments and attorneys' fees or other costs of litigation for loss or injuries to person or property caused by Agent or contributed to by Agent, its representatives, or subcontractors in connection with Agent's duties and responsibilities stated herein, including the marketing,

omissions or representations of the services provided herein, regardless of the form of action. Each party shall defend any and all of its own acts or alleged acts at its own cost and expense.

#### **10. Default and Termination**

(a) Either party may terminate this Agreement by serving written notice to the other party at least sixty (60) days prior to any scheduled expiration date. In the event that Agent terminates this Agreement without cause, Agent shall be entitled to commissions earned by it for \_ months following termination. In the event that AAT terminates this Agreement without cause, Agent shall be entitled to commissions earned by it for \_ months following termination.

(b) Except as provided below, either party, upon thirty (30) days written notice to the other party, may terminate this Agreement if the other party materially breaches the Agreement or fails to perform any obligation arising hereunder. The party in breach or default shall have the right to cure any such breach or default during said thirty (30) day period, or during a longer period if, by its nature, the cause is such that it is not curable within the thirty (30) day period, provided that the party in breach immediately initiates all substantial and continuing action to cure such breach. Notwithstanding the foregoing, AAT shall have no obligation to afford Agent any opportunity to cure any breach which constitutes a violation of any applicable legal or regulatory requirement governing LOAs, customer solicitations, or PIC changes.

(c) Notwithstanding anything herein to the contrary, if either party is declared bankrupt, is the subject of any proceedings relating to its liquidation, insolvency, or for the appointment of a receiver or similar officer for such party, makes an assignment for the benefit of its creditors, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, this Agreement may be terminated by either party hereto.

(d) Any misrepresentations or misstatements made by Agent about AAT or its services, shall be deemed to constitute a material breach of this Agreement.

#### **11. Force Majeure**

If the performance of the respective obligations of AAT or Agent shall be prevented or interfered with by reason of any fire, flood, epidemic, earthquake or any act of God, explosion, strike or other disputes, riot or civil disturbance, war (whether declared or undeclared) or armed conflict, any municipal ordinance or state or federal law, governmental order or regulation or order of any court of competent jurisdiction, or other similar forces not within the control of AAT or Agent, as the case may be, then Agent and/or AAT, as the case may be, shall not be liable to the other for its failure to perform such obligations hereunder.

#### **12. Severability**

If any provision of this Agreement shall be declared judicially invalid, unenforceable or void, such decision shall not have the effect of invalidating or voiding the remainder of this Agreement, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to render it legal and enforceable while preserving its intent. If such modification is not possible, another term or provision that



is legal and enforceable and that achieves the same objective shall be substituted. In the event that any court of competent jurisdiction, the FCC, or a state public service commission determines that either party's performance under this Agreement violates the laws of the United States, or of any state, or any rule or regulation of the FCC or a state public service commission, then either party shall be excused from its obligations under this Agreement to the extent that performance of such obligations violates said laws or regulations.

### **13. Governing Law**

This Agreement shall be governed by the laws of the State of Texas without reference to conflict of laws rules, and the construction, interpretation and performance of this Agreement and all transactions hereunder shall be governed by the laws of the State of Texas.

### **14. Resolution of Disputes**

(a) Any controversy or dispute between the parties to this Agreement shall be resolved by arbitration to be conducted at Fort Worth, Texas, or such other location as may be mutually agreed upon by the parties, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The award of the arbitrators, or the majority of them, shall be final and judgment upon any such award may be entered in any federal or state court of competent jurisdiction. Arbitrable disputes between the parties may include any controversy or claim including, without limitation, any claim based upon contract, tort, or statute, arising out of or relating to this Agreement or any transaction related to this Agreement. Either party may serve written demand for arbitration upon the other party within 180 days after the dispute has arisen. A dispute is considered to have arisen upon receipt of written demand or service of judicial process. Failure to serve a demand for arbitration within the time specified in this paragraph shall be deemed a waiver of the aggrieved party's right to compel arbitration of such claim.

(b) Agent and AAT shall each bear its own fees, costs, and expenses of such arbitration including, without limitation, its own legal expenses, attorneys' fees, and costs of all experts and witnesses. The parties shall each be severally responsible for one-half of the fees, costs, and expenses of the Arbitration Panel. Notwithstanding the foregoing, if the claim of either party is upheld by the Arbitration Panel in all material respects, the Arbitration Panel may apportion between the parties as the Arbitration Panel may deem equitable the costs incurred by the prevailing party.

(c) Other than matters involving injunctive relief as a remedy or any action necessary to enforce the award of the Arbitration Panel, the parties agree that the provisions of this section are a complete defense to any suit, action, or other proceeding instituted in any court or before any administrative tribunal with respect to any dispute, controversy or claim arising under or in connection with this Agreement or the provision of telecommunications services by AAT. Nothing in this section shall prevent the parties from exercising their rights to terminate this Agreement in accordance with the terms of this Agreement.

**15. Assignment**

This Agreement shall be binding upon and inure to the benefit of AAT and Agent, their respective heirs and assigns. Agent may not assign its rights under this Agreement without the express prior consent of AAT which shall not be unreasonably withheld. AAT reserves the right to condition such consent upon obtainment of credit information sufficient to verify any such assignee's creditworthiness and to require additional security deposits from assignees.

**16. No Third Party Beneficiary**

This Agreement is not intended, nor shall it be construed, to create or convey any right upon any entity not a party to this Agreement.

**17. Notices**

Any written notice, demand, or request required or authorized by this Agreement, shall be deemed properly delivered if deposited in a regularly maintained receptacle for United States mail, postage fully prepaid, and/or sent, via overnight, express, registered, or certified mail, return receipt requested, and addressed to the applicable party at its address set forth as follows:

Notices to AAT:

Mr. Patrick Thompson  
2020 W. Northwest Hwy, Suite 107  
Grapevine, Texas 76051

Telephone (817) 251-0954

Fax (817) 251-0796

Notices to Agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone:

Fax:

**18. Headings**

The paragraph headings in this Agreement are for convenience of reference only and in no way define, extend, or describe any of the provisions of this Agreement, or affect the meaning or interpretation of any of the provisions of this Agreement.

**19. Waivers**

No delay or omission on the part of either party in exercising any right or privilege under this Agreement shall operate as or constitute a waiver thereof.

**20. Entire Agreement**

This Agreement, including the exhibits hereto and the documents and instruments referred to therein, embodies the entire agreement and understanding of the parties hereto in respect of

the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement, and any documents and instruments contemplated hereby, supersedes all prior agreements and understandings between the parties with respect to such subject matter.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the date first set forth above.

ALL AMERICAN TELEPHONE, INC.

AGENT

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

62865.1/0952

**FLEISCHMAN AND WALSH, L. L. P.**

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

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WASHINGTON, D. C. 20036

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STEPHEN A. BOUCHARD  
R. BRUCE BECKNER  
HOWARD S. SHAPIRO  
CHRISTOPHER G. WOOD  
BETH A. DAVIDSON  
MITCHELL Y. BRISCHER  
JAMES F. MORARTY  
MATTHEW D. ENNER  
HOWARD A. TOPEL

JILL KLEPPE McCLELLAND  
REGINA FARIOLIETTI PACE  
RHETT D. WOODMAN  
CRAIG A. GILLEY  
MARK F. VILARDO  
PETER J. BARRETT  
KIMBERLY A. KELLY  
ROBERT E. STUP, JR.  
ANDREW M. FRIEDMAN  
DEBRA A. McGUIRE  
JOSHUA W. RESNIK  
STEPHEN E. HOLSTEN  
SUSAN A. MORT  
ALEXANDER T. McCLAIN\*  
MARK D. FINESTRON\*\*  
BETH-SHEPPI ARTERESE  
BRIAN C. MALADY\*\*\*

June 19, 1998

VIA FAX AND OVERNIGHT MAIL

Charles Pelligrini, Esq.  
Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Docket No. 971493-TI - In re Initiation of show cause proceedings against  
All American Telephone, Inc. for violations of Rule 25-4.118, F.A.C.  
Interexchange Carrier Selection

Dear Mr. Pelligrini:

On March 9, 1998, I sent to your office a letter setting forth a comprehensive offer to settle the above-captioned show cause proceeding which had been initiated against my client, All American Telephone, Inc. As you will recall, that proposal consisted of several important changes to All American's sales, marketing, and customer verification practices, as well as an offer to pay a voluntary contribution to the State Treasury in the amount of \$18,000. The payment amount proposed was based on a payment of \$500 per closed violation for each of the 37 violations asserted in the Show Cause Order to have been closed by the Commission's Consumer Affairs Division, less the one "violation" which involved the innocent and unintentional transposition of two digits of a customer's telephone number resulting in the wrong customer having its service switched.

Based upon several conversations between undersigned counsel and members of the Commission staff, and following consultation with the management of All American, I have been authorized to submit the following revised settlement offer:

1. Voluntary Payment - All American will make a voluntary payment in the amount of \$32,400 to the State Treasury. That amount represents \$900 per closed violation for each of the 36 "closed" complaints mentioned above. That is an increase of eighty percent per violation over the previous offer. All American proposes to make an initial payment of \$10,800 at the time that the offer is accepted and

\* UT BAR ONLY  
\*\* NY AND NA BARS ONLY  
\*\*\*NY BAR ONLY

Charles Pellegrini, Esq.  
June 19, 1998  
Page 2.

the show cause proceeding terminated. It would then make monthly payments in the amount of \$3,600 for the next six months.

2. Elimination of Sweepstakes - All American will immediately discontinue all sales and marketing activities in Florida which involve the use of sweepstakes or contest promotions. No contests will be conducted by All American or any of its agents, and no prizes will be awarded to randomly-selected persons. While All American may offer inducements such as free minutes of use or discounts to all customers signing up for its service, it will totally exit the sweepstakes aspect of the business.

This offer, if accepted, would be in settlement of all complaints against All American based upon conduct occurring through the date of settlement. All American believes that this revised settlement offer is fair and equitable to the Commission and to Florida consumers, and it is hopeful that the Commission will find this offer to be acceptable. In considering the size of the voluntary contribution proposed, please note that All American reported intrastate revenues during 1997 of only \$568,650 -- an amount substantially below that reported by any other carrier which has had an offer to settle a slamming-related show cause order approved by the Commission. Moreover, by committing to discontinue all use of sweepstakes promotions in its marketing, All American is attempting to respond to articulated expressions of Commission and Staff concern about such marketing methods.

On behalf of All American, it is my hope that Staff and ultimately the Commission will find this offer to be acceptable and that this proceeding can be terminated by agreement between the parties. If there are any questions regarding this offer, please communicate directly with undersigned counsel for All American.

Sincerely,



Mitchell F. Brecher  
Counsel for All American Telephone, Inc.

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February 11, 1998

**VIA OVERNIGHT MAIL**

William Cox, Esq.  
Legal Division  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850



Re: All American Telephone, Inc.

Dear Mr. Cox:

Per our recent discussions, All American Telephone, Inc. has been in the process of modifying certain aspects of its operations in order to eliminate the complaints against it which have been received by the Florida Public Service Commission. I am enclosing with this letter several materials which reflect these changes. It is my hope that you will review these materials with your colleagues on the PSC staff and that we can use these changes as the basis for formulating a settlement which resolves the issues raised in the order to show cause recently issued against All American. As we discussed, these materials are being submitted for the purpose of enabling our settlement discussions to proceed, and are not intended to be entered into the record of Docket No. 971493-TI or any other PSC proceeding, nor should they be construed as an admission that All American has violated any provision of Florida Statutes or the regulations of the PSC. The items enclosed herewith include the following:

1. Revised Display Sign - All American has revised the display sign used in connection with its sweepstakes promotion. You will note that the multi-colored sign contains in prominent size the words "SIGN UP FOR ALL AMERICAN TELEPHONE LONG DISTANCE SERVICE OR PERSONAL 800 NUMBER." This language is being added so that it is clear to consumers that the display is a solicitation to sign up for All American's long distance telephone service. Inclusion of this language on the display box should prevent consumers from believing that they are entering a contest which has no connection with All American's service.

2. Revised Letter of Agency - The enclosed letter of agency has been redesigned to comply fully with every requirement contained in Rule 25-4.118(3)(b), Florida Administrative

Code. As you can see, all of the language required by that rule is clearly legible and is printed in type as large as any other text on the document. In addition, each of the requisite items of information is contained in the letter of agency. The letter of agency (clearly labeled at the top as LONG DISTANCE SERVICE APPLICATION LETTER OF AGENCY) is a stand-alone document which contains no promotional language or references to inducements of any kind.

3. Revised Agent Agreement - The third item included is a revised version of All American's Agent Agreement. This agreement sets forth the terms under which independent agents market service on behalf of All American. Your attention is especially directed to Sections 4.a through c, 5.A.iii, 6, and 10.b. These provisions obligate agents to operate in full conformance with all applicable legal and regulatory requirements, require that All American approve all promotional materials, including LOAs, used in the marketing of its service by agents, holds agents accountable for any violations, and permits immediate termination of any agent agreement for violation of applicable legal and regulatory requirements. We believe that this agent agreement is among the strictest, if not the strictest, in the telecommunications industry.

In addition to the materials enclosed herewith, All American will continue its practice of promptly investigating and resolving all complaints, and of issuing credits for service to customers and paying the primary interexchange carrier (PIC) change back fees imposed by local exchange carriers for those customers who claim to have had their service switched to All American against their will. I hope that you will carefully consider these materials and the commitments by All American and will recognize that they reflect All American's good faith effort to take affirmative steps to eliminate complaints regarding its marketing practices and slamming.

I look forward to speaking with you after you and your fellow staff members have reviewed these materials.

Sincerely,



Mitchell F. Brecher

Enclosures

**ENTER TO WIN**

**A NEW**



**CAR**

**OR**

**\$20,000**

**CASH**

**SIGN UP FOR  
ALL AMERICAN  
TELEPHONE**

**LONG  
DISTANCE  
SERVICES**

**OR**

**PERSONAL  
800 NUMBER**

**No purchase necessary-Official rules on side of box**



DIST #

YOU MUST BE AT LEAST 18 YEARS OF AGE TO COMPLETE THIS FORM

LONG DISTANCE SERVICE APPLICATION  
LETTER OF AGENCY  
PLEASE PRINT - FILL OUT COMPLETELY  
ONLY ONE PER HOUSEHOLD

DATE (REQUIRED) \_\_\_\_\_ KMI-WAC  
NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
HOME PHONE (REQUIRED) (\_\_\_\_) \_\_\_\_\_-\_\_\_\_

I CERTIFY THAT I AM AT LEAST 18 YEARS OF AGE. THE PHONE NUMBER/S LISTED ON THIS APPLICATION ARE LISTED IN MY NAME AND/OR I AM AUTHORIZED TO CHANGE THE LONG DISTANCE SERVICE. I HEREBY AUTHORIZE ALL AMERICAN TELEPHONE, INC. (AAT) TO ACT AS MY AGENT, AND TO CONVERT THE LONG DISTANCE SERVICE ON MY PHONE LISTED ABOVE FROM MY CURRENT CARRIER TO AAT. I UNDERSTAND THAT THIS LOA CHANGES MY CARRIER, AND I MAY DESIGNATE ONLY ONE CARRIER AT A TIME FOR ANY ONE NUMBER. I UNDERSTAND THAT MY LOCAL PHONE COMPANY MAY ASSESS A CHARGE FOR MY CONVERSION TO AAT. IF THIS OCCURS, AAT WILL CREDIT MY ACCOUNT IF I SEND A COPY OF MY BILL TO: AAT, P.O. BOX 275, HURST, TX 76053.

SIGNATURE (REQUIRED) X \_\_\_\_\_

DIST #

YOU MUST BE AT LEAST 18 YEARS OF AGE TO COMPLETE THIS FORM

LONG DISTANCE SERVICE APPLICATION  
LETTER OF AGENCY  
PLEASE PRINT - FILL OUT COMPLETELY  
ONLY ONE PER HOUSEHOLD

NAME OF COMPANY

DATE (REQUIRED) \_\_\_\_\_ KMI-WAC  
NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
HOME PHONE (REQUIRED) (\_\_\_\_) \_\_\_\_\_-\_\_\_\_

I CERTIFY THAT I AM AT LEAST 18 YEARS OF AGE. THE PHONE NUMBER/S LISTED ON THIS APPLICATION ARE LISTED IN MY NAME AND/OR I AM AUTHORIZED TO CHANGE THE LONG DISTANCE SERVICE. I HEREBY AUTHORIZE ALL AMERICAN TELEPHONE, INC. (AAT) TO ACT AS MY AGENT, AND TO CONVERT THE LONG DISTANCE SERVICE ON MY PHONE LISTED ABOVE FROM MY CURRENT CARRIER TO AAT. I UNDERSTAND THAT THIS LOA CHANGES MY CARRIER, AND I MAY DESIGNATE ONLY ONE CARRIER AT A TIME FOR ANY ONE NUMBER. I UNDERSTAND THAT MY LOCAL PHONE COMPANY MAY ASSESS A CHARGE FOR MY CONVERSION TO AAT. IF THIS OCCURS, AAT WILL CREDIT MY ACCOUNT IF I SEND A COPY OF MY BILL TO: AAT, P.O. BOX 275, HURST, TX 76053.

bold type?  
or as large as  
any other text

SIGNATURE (REQUIRED) X \_\_\_\_\_

make form severable so customers can  
only enter sweepstakes.

**ALL AMERICAN TELEPHONE, INC.**

**AGENT AGREEMENT**

This Agreement is entered into this \_\_\_ day of \_\_\_\_\_. 19\_\_ by and between All American Telephone, Inc., a corporation organized under the laws of the State of Texas ("AAT"), and \_\_\_\_\_ ("Agent").

**WITNESSETH**

WHEREAS, AAT is a duly authorized telecommunications carrier and is engaged in the business of providing certain telecommunications services, including interexchange services, to the public; and

WHEREAS, AAT, subject to the terms and conditions set forth in this Agreement, desires to grant to Agent, and Agent desires to accept from AAT, the right to solicit customers on behalf of AAT for the purchase of telecommunications services provided by AAT.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the parties do hereby contract and agree as follows:

**1. Appointment of Agent**

Agent hereby grants to Agent the right to solicit customers on behalf of AAT for the purchase of telecommunications services provided by AAT. Agent's authority shall be limited to offering only those services approved by AAT, subject to the terms and conditions herein set forth.

**2. Territory**

Agent shall have the right to solicit customers on behalf of AAT only within those states and/or territories approved by AAT.

**3. Term**

This Agreement shall commence on the date of execution or the earliest date Agent submits to AAT orders for services, whichever is later ("Commencement Date"), and shall continue in full force and effect for a minimum period of one (1) year unless terminated in accordance with paragraph 8 of this Agreement, and shall automatically be renewed for successive periods of one (1) year unless terminated by written notice from either party to the other not less than sixty (60) days prior to the scheduled expiration date.

**4. Orders for Services**

(a) Agent shall submit to AAT order for AAT service obtained from customers in a manner and/or on forms approved in advance by AAT for Agent's use in obtaining customer orders. Unless agreed to otherwise, every customer order submitted to AAT by Agent shall be accompanied by a Letter of Agency ("LOA") properly executed by the prospective customer. Such LOA shall be on a form specifically approved by AAT and shall comply in all material respects with all applicable legal requirements for LOAs, including any rules established by the

Federal Communications Commission ("FCC") and any state public service commission in any state in which Agent has been authorized by AAT to solicit customers. All LOAs submitted by Agent to AAT shall become the exclusive property of AAT and shall only authorize AAT to act as customer's agent in arranging with customers' local exchange telephone carrier ("LEC") for AAT to become the customer's Presubscribed Interexchange Carrier ("PIC").

(b) AAT may reject any customer order submitted to it by Agent for any reasonable cause, including, but not limited to, Agent's failure to provide to AAT a properly executed and legible LOA which, in AAT's best judgment, conforms with all applicable legal requirements governing LOAs. Notwithstanding any other provisions of this Agreement, Agent shall have no right to compensation from AAT for orders rejected by AAT pursuant to this paragraph.

(c) In the event any LOA submitted by Agent to AAT shall be deemed not to be valid by a LEC or any federal or state court or regulatory body with authority over interexchange telecommunications services, either because of forgery or because the LOA has been obtained in an unethical, misleading or deceptive manner, or is in any other respect unlawful, then Agent shall be fully liable to AAT for any and all resulting costs, including monetary fines, or other expenses associated therewith.

## **5. Duties and Obligations**

### **A. Agent**

Agent shall have the following duties and obligations:

- (i) To solicit interexchange telecommunications service customers exclusively for AAT;
- (ii) To submit to AAT all orders and/or executed LOAs immediately upon receipt by Agent. Agent shall submit same in some organized manner (i.e. banded by sub-agent and/or batch);
- (iii) To at all times conduct its duties and obligations under this Agreement in a professional and ethical manner, and in full conformance with all applicable legal and regulatory requirements.

In addition to the foregoing duties and obligations, Agent agrees to cooperate with AAT to the fullest extent possible and to the best of Agent's ability to facilitate the provisioning of services provider hereunder.

### **B. AAT**

AAT shall have the following duties and obligations:

- (i) To facilitate the provisioning of telecommunications services for customers procured for it by Agent;
- (ii) To arrange for billing and collection for services provided to customers;
- (iii) To provide customer service;

- (iv) To provide Agent with adequate reports to conduct its business affairs.

Each party is responsible for its own costs and expenses associated with its respective duties and obligations under this Agreement, subject to the terms and conditions expressed herein.

#### 6. Use of Promotional Material

Agent shall not distribute or otherwise utilize any printed or other promotional material including, but not limited to, newspaper or other periodical advertisements, direct mail materials, brochures, contest displays, or LOAs, unless those materials have been expressly approved for use by AAT.

#### 7. Agent Compensation

##### A. Commissions

Agent shall be entitled to commissions equal to \_\_ percent of the monthly gross revenues generated from Agent's subscribers, payable on or before the 10th day of each month. All commissions shall be subject to adjustments resulting from bad debt incurred from customers procured for AAT by Agent, including that resulting from off-net usage, unbillable records, rejected records, uncollectible amounts and post-billing adjustments or credits provided to customers. In the event that bad debt incurred from Agent's subscribers exceeds Agent's commission, payments of Agent's monthly commissions shall be suspended until such time as Agent's commissions have accrued to sufficient levels to offset said bad debt.

*hourly rate*

##### B. Other Compensation

In addition to the commissions described in the preceding paragraph, Agent shall be entitled to compensation equal to \$ \_\_ per order and/or LOA submitted by Agent and accepted by AAT, subject to adjustments resulting from orders and PICs rejected. Such compensation shall be payable weekly following the data entry, provisioning and filing of all LOAs.

#### 8. Independent Contractor

Agent is and shall continue to be an independent contractor and is not a legal representative of or employee of AAT for any purpose whatsoever. This Agreement shall not create, nor shall it be construed to create a joint venture, partnership, franchise agreement or any other type of employment relationship between Agent and AAT. Agent has no authority to make any warranties or representations on behalf of AAT without the prior written consent of AAT.

#### 9. Indemnification

Agent shall indemnify and hold AAT harmless from any and all claims, damages or judgments and attorneys' fees or other costs of litigation for loss or injuries to person or property caused by Agent or contributed to by Agent, its representatives, or subcontractors in connection with Agent's duties and responsibilities stated herein, including the marketing,

omissions or representations of the services provided herein, regardless of the form of action. Each party shall defend any and all of its own acts or alleged acts at its own cost and expense.

#### **10. Default and Termination**

(a) Either party may terminate this Agreement by serving written notice to the other party at least sixty (60) days prior to any scheduled expiration date. In the event that Agent terminates this Agreement without cause, Agent shall be entitled to commissions earned by it for \_\_ months following termination. In the event that AAT terminates this Agreement without cause, Agent shall be entitled to commissions earned by it for \_\_ months following termination.

(b) Except as provided below, either party, upon thirty (30) days written notice to the other party, may terminate this Agreement if the other party materially breaches the Agreement or fails to perform any obligation arising hereunder. The party in breach or default shall have the right to cure any such breach or default during said thirty (30) day period, or during a longer period if, by its nature, the cause is such that it is not curable within the thirty (30) day period, provided that the party in breach immediately initiates all substantial and continuing action to cure such breach. Notwithstanding the foregoing, AAT shall have no obligation to afford Agent any opportunity to cure any breach which constitutes a violation of any applicable legal or regulatory requirement governing LOAs, customer solicitations, or PIC changes.

(c) Notwithstanding anything herein to the contrary, if either party is declared bankrupt, is the subject of any proceedings relating to its liquidation, insolvency, or for the appointment of a receiver or similar officer for such party, makes an assignment for the benefit of its creditors, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, this Agreement may be terminated by either party hereto.

(d) Any misrepresentations or misstatements made by Agent about AAT or its services, shall be deemed to constitute a material breach of this Agreement.

#### **11. Force Majeure**

If the performance of the respective obligations of AAT or Agent shall be prevented or interfered with by reason of any fire, flood, epidemic, earthquake or any act of God, explosion, strike or other disputes, riot or civil disturbance, war (whether declared or undeclared) or armed conflict, any municipal ordinance or state or federal law, governmental order or regulation or order of any court of competent jurisdiction, or other similar forces not within the control of AAT or Agent, as the case may be, then Agent and/or AAT, as the case may be, shall not be liable to the other for its failure to perform such obligations hereunder.

#### **12. Severability**

If any provision of this Agreement shall be declared judicially invalid, unenforceable or void, such decision shall not have the effect of invalidating or voiding the remainder of this Agreement, it being the intent and agreement of the parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to render it legal and enforceable while preserving its intent. If such modification is not possible, another term or provision that

is legal and enforceable and that achieves the same objective shall be substituted. In the event that any court of competent jurisdiction, the FCC, or a state public service commission determines that either party's performance under this Agreement violates the laws of the United States, or of any state, or any rule or regulation of the FCC or a state public service commission, then either party shall be excused from its obligations under this Agreement to the extent that performance of such obligations violates said laws or regulations.

### **13. Governing Law**

This Agreement shall be governed by the laws of the State of Texas without reference to conflict of laws rules, and the construction, interpretation and performance of this Agreement and all transactions hereunder shall be governed by the laws of the State of Texas.

### **14. Resolution of Disputes**

(a) Any controversy or dispute between the parties to this Agreement shall be resolved by arbitration to be conducted at Fort Worth, Texas, or such other location as may be mutually agreed upon by the parties, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The award of the arbitrators, or the majority of them, shall be final and judgment upon any such award may be entered in any federal or state court of competent jurisdiction. Arbitrable disputes between the parties may include any controversy or claim including, without limitation, any claim based upon contract, tort, or statute, arising out of or relating to this Agreement or any transaction related to this Agreement. Either party may serve written demand for arbitration upon the other party within 180 days after the dispute has arisen. A dispute is considered to have arisen upon receipt of written demand or service of judicial process. Failure to serve a demand for arbitration within the time specified in this paragraph shall be deemed a waiver of the aggrieved party's right to compel arbitration of such claim.

(b) Agent and AAT shall each bear its own fees, costs, and expenses of such arbitration including, without limitation, its own legal expenses, attorneys' fees, and costs of all experts and witnesses. The parties shall each be severally responsible for one-half of the fees, costs, and expenses of the Arbitration Panel. Notwithstanding the foregoing, if the claim of either party is upheld by the Arbitration Panel in all material respects, the Arbitration Panel may apportion between the parties as the Arbitration Panel may deem equitable the costs incurred by the prevailing party.

(c) Other than matters involving injunctive relief as a remedy or any action necessary to enforce the award of the Arbitration Panel, the parties agree that the provisions of this section are a complete defense to any suit, action, or other proceeding instituted in any court or before any administrative tribunal with respect to any dispute, controversy or claim arising under or in connection with this Agreement or the provision of telecommunications services by AAT. Nothing in this section shall prevent the parties from exercising their rights to terminate this Agreement in accordance with the terms of this Agreement.

**15. Assignment**

This Agreement shall be binding upon and inure to the benefit of AAT and Agent, their respective heirs and assigns. Agent may not assign its rights under this Agreement without the express prior consent of AAT which shall not be unreasonably withheld. AAT reserves the right to condition such consent upon obtainment of credit information sufficient to verify any such assignee's creditworthiness and to require additional security deposits from assignees.

**16. No Third Party Beneficiary**

This Agreement is not intended, nor shall it be construed, to create or convey any right upon any entity not a party to this Agreement.

**17. Notices**

Any written notice, demand, or request required or authorized by this Agreement, shall be deemed properly delivered if deposited in a regularly maintained receptacle for United States mail, postage fully prepaid, and/or sent, via overnight, express, registered, or certified mail, return receipt requested, and addressed to the applicable party at its address set forth as follows:

Notices to AAT:

Mr. Patrick Thompson  
2020 W. Northwest Hwy, Suite 107  
Grapevine, Texas 76051

Telephone (817) 251-0954

Fax (817) 251-0796

Notices to Agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone:

Fax:

**18. Headings**

The paragraph headings in this Agreement are for convenience of reference only and in no way define, extend, or describe any of the provisions of this Agreement, or affect the meaning or interpretation of any of the provisions of this Agreement.

**19. Waivers**

No delay or omission on the part of either party in exercising any right or privilege under this Agreement shall operate as or constitute a waiver thereof.

**20. Entire Agreement**

This Agreement, including the exhibits hereto and the documents and instruments referred to therein, embodies the entire agreement and understanding of the parties hereto in respect of

the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement, and any documents and instruments contemplated hereby, supersedes all prior agreements and understandings between the parties with respect to such subject matter.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the date first set forth above.

**ALL AMERICAN TELEPHONE, INC.**

**AGENT**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

62865.1/0952