



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: AUGUST 26, 1999

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

FROM: DIVISION OF LEGAL SERVICES (WATTS) *cmw*
 DIVISION OF CONSUMER AFFAIRS (JOHNSON) *JB*
 DIVISION OF COMMUNICATIONS (BIEGALSKI) *in*

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

AGENDA: 09/07/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

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

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CASE BACKGROUND

- March 21, 1998 - American Nortel Communications Inc. (ANC) obtained Florida Public Service Interexchange Telecommunications certificate number 3189.
- November 23, 1998 - Staff issued Order No. PSC-98-1555-SC-TI, in Docket No. 981247-TI, ordering ANC to show cause in writing within 21 days of the effective date of the Order why it should not be fined \$160,000 for apparent violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, or have its certificate canceled.
- January 11, 1999 - American Nortel filed a Motion for Extension of Time to Further Respond to Order to Show Cause.
- January 12, 1999 - American Nortel filed a Motion for Leave to File Amended Response to Order to Show Cause.

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FPSC-RECORDS/REPORTING

- January 15, 1999 - Office of Public Counsel (OPC) filed a complaint against ANC and a Notice of Intervention.
- February 9, 1999 - ANC filed a response to OPC's complaint.
- February 16, 1999 - Order No. PSC-99-0306-PCO-TI was issued acknowledging OPC's intervention.
- February 16, 1999 - Staff met with ANC to address its concerns related to the apparent slamming violations.
- March 26, 1999 - ANC submitted its offer of settlement.
- April 1, 1999 - ANC filed a Motion for Temporary Protective Order.
- April 15, 1999 - Staff and OPC met with ANC to review pending settlement offer and address additional concerns related to the apparent slamming violations.
- June 28, 1999 - ANC submitted a revised offer of settlement. (Attachment A, Pages 6-12)
- August 20, 1999 - ANC's 1998 regulatory assessment fee return reported gross intrastate revenues of \$1,020,270.13.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant American Nortel Communications Inc.'s Motion for Extension of Time to Further Respond to Order to Show Cause and Motion for Leave to File Amended Response to Order to Show Cause?

RECOMMENDATION: Yes. The Commission should grant ANC's Motion for Extension of Time to Further Respond to Order to Show Cause and Motion for Leave to File Amended Response to Order to Show Cause. (Watts)

STAFF ANALYSIS: As stated in the case background, ANC was required by Order No. PSC-98-1555-SC-TI, issued November 23, 1998, to show cause why it should not be fined for violation of Rule 25-4.118, Florida Administrative Code, by December 14, 1998. On December 11, 1998, ANC timely responded to the Order. On January 11, 1999, ANC filed a Motion for Extension of Time to Further Respond to Order to Show Cause and on January 12, 1999, ANC filed a Motion for Leave to

File Amended Response to Order to Show Cause. No timely responses were filed objecting to the motions. The ongoing investigation into the alleged rule violations and to initiate settlement discussions with staff were the asserted grounds for ANC's requests for an extension of time and leave to file an amended response. Because settlement negotiations were ongoing and have been successful to the extent a settlement offer supported by staff is now before the Commission, staff recommends granting ANC's motions.

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

RECOMMENDATION: Yes. The Commission should accept the company's settlement proposal. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. (Biegalski)

STAFF ANALYSIS: On June 28, 1999, after several meetings with staff and OPC, ANC submitted its revised offer of settlement. In its settlement offer ANC agreed to do the following:

- ANC will continue its voluntary suspension of its marketing efforts in Florida for a period of two years dating from December 1, 1998 to December 1, 2000.
- ANC will allow staff to review any proposed Florida marketing materials before such materials are utilized, for a period of one year after resuming marketing in Florida.
- Upon resuming marketing in Florida, ANC will implement a warm transfer system by which a customer calling the Commission with a complaint concerning the unauthorized change of their preferred interexchange carrier to ANC may be transferred directly to ANC.

- ANC will continue to address and resolve all Florida customer inquiries and complaints.
- ANC will make a contribution of \$30,000 to the general revenue fund of the State of Florida with no admission of liability or wrongdoing, payable in the amount of \$10,000 on December 1, 1999, May 1, 2000, and December 1, 2000.

Staff supports ANC's proposal not to resume telemarketing in Florida until December 1, 2000. Staff believes this will allow ANC an opportunity to evaluate its current marketing techniques and make the necessary revisions in order to reduce consumer complaints. Staff supports ANC's proposal to obtain staff's approval of marketing methods before ANC resumes marketing in Florida. Staff believes obtaining prior approval will result in fewer consumer complaints. Staff supports ANC's proposal to establish a warm transfer system with the Commission for consumer complaints. Staff believes this will allow for expedited resolution of those consumer complaints. Staff supports ANC's proposal to continue to address and resolve all customer inquiries and complaints. Staff believes as a certificated telecommunications company, ANC should continue to adhere to the rules of the Florida Public Service Commission.

The company has satisfactorily addressed each of staff's concerns. Moreover, the company has been very cooperative in resolving all issues. Although OPC has not yet voiced an opinion on the proposed settlement, staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, in the amount of \$30,000 payable in three installments each on or before December 1, 1999, May 1, 2000, and December 1, 2000.

DOCKET NO. 971489-TI
DATE: August 26, 1999

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. With the approval of Issue 2, this docket should remain open pending the remittance of the \$30,000 voluntary contribution. ANC will remit payments of \$10,000 each on or before December 1, 1999, May 1, 2000, and December 1, 2000. Upon remittance of the final settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the settlement offer, the company's certificate should be canceled, and this docket will be closed. (Watts)

STAFF ANALYSIS: If the Commission approves the staff recommendation in Issue 2, this docket should remain open pending the remittance of the \$30,000 voluntary contribution. The voluntary contribution will be remitted in \$10,000 installments on December 1, 1999, May 1, 2000, and December 1, 2000. Upon submittance of the final settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the settlement offer, the company's certificate should be canceled, and this docket will be closed.

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

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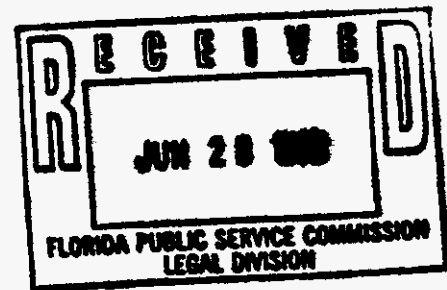
OF COUNSEL:
CHARLES F. DUDLEY

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

June 28, 1999

HAND DELIVERY

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



Re: American Nortel Communications, Inc.
Docket No. 971247-TI

Dear Ms. Watts:

This letter presents a second proposal for settlement of the show cause proceedings initiated by the Commission against American Nortel Communications, Inc. ("ANC"). As stated in ANC's original settlement proposal dated March 26, 1999, which is incorporated herein by reference and a copy of which is attached, in the event that this matter is not settled, nothing contained in this letter should be construed as an admission against interest or a waiver of any and all rights that ANC may have if this matter is litigated, including the right to object to the admissibility of this settlement proposal under the Florida Evidence Code.

INTRODUCTION

Since meeting with Commission staff and representatives of the Office of Public Counsel on April 15, 1999 in connection with ANC's original settlement proposal, ANC has produced 53 signed letters of agency ("LOAs") for telephone numbers involved in complaints to the Commission alleging the unauthorized change of a customer's interexchange carrier selection to ANC. The LOAs state, in clearly legible bolded capital letters at the top of the LOA form, "OFFICIAL LOA FORM" and "LONG DISTANCE APPLICATION." The LOAs go on to state the following immediately below the signature line:

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Clintina Watts, Esq.
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I hereby authorize American Nortel Communications, Inc. (ANCI) to act as my agent, and to convert the long distance service on my phone listed above from my current carrier to ANCI. I understand that this LOA changes my carrier, and that I may designate only 1 carrier at a time for any 1 number. I understand that I will be billed through my local telephone company by ANCI. I understand that my local phone company may access a charge for my conversion to ANCI.

ANC's LOAs thus complied with the requirements of Rule 25-4.118, Florida Administrative Code, in effect at the time the LOAs were obtained. However, ANC has no systematic index or efficient means of retrieval of all Florida LOAs, and of course Rule 25-4.118 has since been amended to prohibit sweepstakes marketing of interexchange services in Florida. There would seem to be little benefit in attempting to further document a marketing program that ANC voluntarily terminated as of December 1, 1998 and that would no longer be authorized under Rule 25-4.118, as amended. Additionally, since voluntarily suspending the marketing of its interexchange services in Florida as of December 1, 1998, ANC's Florida customer base has been reduced to approximately 560 remaining customers.

SETTLEMENT PROPOSAL

As stated in its original settlement proposal, ANC continues to believe that its limited resources would be better utilized through appropriate marketing of its interexchange services in other jurisdictions at this time, rather than on litigation concerning the circumstances of the seventeen alleged instances of unauthorized switching of a customer's interexchange carrier involved in these proceedings in Florida. Accordingly, and without admission of liability, ANC makes the following second proposal for settlement of these proceedings:

1. ANC will continue the voluntary suspension of its marketing efforts in Florida for a period of two years from the date the suspension began, December 1, 1998, to December 1, 2000;
2. ANC will allow Commission staff to review any proposed Florida marketing materials before such materials are utilized, for a period of one year after resuming marketing in Florida;
3. Upon resuming marketing in Florida, ANC will install a warm transfer system by which customers calling the Commission with a complaint concerning the unauthorized change of their preferred interexchange carrier to ANC may be transferred directly to ANC's toll-free line;

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Clintina Watts, Esq.

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4. Upon resuming marketing in Florida, ANC will provide its toll-free customer service number on every customer bill. ANC previously has provided the toll-free number of its billing agent on its customer bills, and has directed its billing agent to provide ANC's toll-free number to all customers who call with inquiries or complaints concerning ANC;

5. ANC will continue to address and resolve all Florida customer inquiries and complaints; and

6. ANC will pay to the State of Florida a voluntary contribution of Thirty Thousand Dollars (\$30,000.00), payable in three installments of Ten Thousand Dollars (\$10,000.00) each on or before December 1, 1999, May 1, 2000, and December 1, 2000.

JUSTIFICATION FOR PROPOSAL

1. ANC has promptly responded to the Commission's transmittals of customer complaints, by rerating and refunding charges to all such customers without question or exception. In some cases, ANC has simply refunded the entire amount of a customer's monthly billing.

2. ANC's sweepstakes LOA in fact complied with the terms of Rule 25-4.118(3), Florida Administrative Code, at the time it was used in Florida, and was approved by the Commission staff in August, 1998. Nevertheless, ANC recognizes that sweepstakes marketing has been a frequent source of slamming complaints involving a number of carriers in Florida, and that sweepstakes marketing of interexchange services was eliminated by the amendments to Rule 25-4.118 as of December 28, 1998.

3. ANC voluntarily and immediately suspended its Florida marketing as of December 1, 1998, upon notification of the Commission's show cause order. No other state or federal agency has initiated similar proceedings against ANC. Under the proposed settlement, ANC would presubmit any Florida marketing materials to the Commission staff for a period of one year after resuming marketing in Florida, in order to avoid the expenditure of its own and the Commission staff's time and other limited resources in the resolution of slamming complaints and in litigation such as that involved in these proceedings.

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Clintina Watts, Esq.

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ANC believes that the settlement proposal made in this letter is reasonable and justified, and is hopeful that staff and the Commission will find the proposal to be acceptable and in the public interest.

Sincerely,



John R. Ellis

JRE/ri

cc: Mr. William P. Williams, President

American Nortel Communications, Inc.

Charles J. Beck, Esq.

Kenneth A. Hoffman, Esq.

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

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AMY J. YOUNG

March 26, 1999

HAND DELIVERY

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

Re: American Nortel Communications, Inc.
Docket No. 981247-TI

Dear Ms. Brown:

This letter presents a proposal for settlement of the show cause proceedings initiated by the Commission against American Nortel Communications, Inc. ("ANC"). In the event this matter cannot be settled, nothing contained in this letter should be construed as an admission against interest or a waiver of any and all rights that ANC may have if this matter is litigated, including the right to object to the admissibility of this settlement proposal under the Florida Evidence Code.

INTRODUCTION

ANC was granted Interexchange Telecommunications Certificate No. 5336 on March 21, 1998, pursuant to Order No. PSC-98-0337-FOF-TI. ANC is a switchless reseller which currently provides interexchange services to approximately 8,700 customers in Florida.

ANC's Florida customers were acquired initially by telemarketing and subsequently by sweepstakes marketing programs, primarily conducted by an independent contractor, CCC Telecommunications of Pompano Beach, Florida. In August, 1998, the Commission's Communications Division staff reviewed the Letter of Agency ("LOA") form being used by CCC Telecommunications on behalf of ANC and suggested changes specifying the age of the applicant on

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the form. The suggested changes were made and copies of the revised LOA were provided to the staff.

However, apparently in response to the number of complaints involving ANC which had been received by the Commission in ANC's first six months of Florida operations, staff recommended the initiation of show cause proceedings against ANC on October 22, 1998. ANC first received notice of these proceedings when it received the Commission's Order No. PSC-98-1555-SC-TI, issued on November 23, 1998. ANC then suspended all Florida marketing as of December 1, 1998, voluntarily and without request from the Commission or from any other party.

SETTLEMENT PROPOSAL

ANC believes that its limited resources would be better utilized through appropriate marketing of its interexchange services in other jurisdictions at this time, rather than on litigation concerning the circumstances of the seventeen alleged instances of unauthorized switching of a customer's interexchange carrier involved in these proceedings in Florida. ANC wishes to direct its resources to the prompt settlement and resolution of these proceedings, and in the future to the efficient marketing of its interexchange services in Florida. ANC proposes the following terms as a settlement of these proceedings:

1. ANC will continue the voluntary suspension of its marketing efforts in Florida for a period of one year from the date the suspension began, December 1, 1998, to December 1, 1999;
2. ANC will notify the Commission staff of the terms of any proposed Florida marketing programs for a period of one year from December 1, 1999 to December 1, 2000, in advance of conducting any marketing program in Florida, and will not implement any such program without staff approval; and
3. ANC will pay to the State of Florida a voluntary contribution of Thirty Thousand Dollars (\$30,000.00), payable in three installments of Ten Thousand Dollars (\$10,000.00) each on or before April 15, August 15, and December 1, 1999.

In support of its settlement proposal, ANC provides the following detailed justification.

JUSTIFICATION FOR PROPOSAL

1. ANC has promptly responded to the Commission's transmittals of customer complaints, by rerating and refunding charges to all such customers without question or exception. In some cases, ANC has simply refunded the entire amount of a customer's monthly billing.

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RUTLEDGE, ECENIA, PURNELL & HOFFMAN

Martha Carter Brown, Esq.

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2. ANC's sweepstakes LOA in fact complied with the terms of Rule 25-4.118(3), Florida Administrative Code, at the time it was used in Florida, and was approved by the Commission staff in August, 1998. Nevertheless, ANC recognizes that sweepstakes marketing has been a frequent source of slamming complaints involving a number of carriers in Florida, and that sweepstakes marketing of interexchange services was eliminated by the amendments to Rule 25-4.118 as of December 28, 1998.

3. ANC voluntarily and immediately suspended its Florida marketing as of December 1, 1998, upon notification of the Commission's show cause order. No other state or federal agency has initiated similar proceedings against ANC. Under the proposed settlement, ANC would secure staff approval before conducting any further marketing in Florida until December 1, 2000, in order to avoid the expenditure of its own and the Commission staff's time and other limited resources in the resolution of slamming complaints and in litigation such as that involved in those proceedings.

ANC believes that the settlement proposal made in this letter is reasonable and justified, and is hopeful that staff and the Commission will find the proposal to be acceptable and in the public interest.

Sincerely,



John R. Ellis

JRE/rl

cc: Mr. William P. Williams, President
American Nortel Communications, Inc.
Charles J. Beck, Esq.
Kenneth A. Hoffman, Esq.

ANC.proposal