

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 981247-TI
ORDER NO. PSC-99-1875-AS-TI
ISSUED: September 21, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER APPROVING OFFER OF SETTLEMENT

BACKGROUND

American Nortel Communications Inc. (ANC), holder of Certificate No. 3189, is a provider of interexchange telecommunications service. ANC was certificated on March 21, 1998. ANC's 1998 regulatory assessment fee return reported gross intrastate revenues of \$1,020,270.13. As a provider of interexchange telecommunications service in Florida, ANC is subject to the rules and regulations of this Commission.

By Order No. PSC-98-1555-SC-TI, issued November 23, 1998, we ordered 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, or have its certificate canceled. The Office of Public Counsel (OPC) filed a Notice of Intervention in this matter. ANC filed a 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. Prior to the show cause proceedings, ANC submitted an offer to settle the case.

DOCUMENT NUMBER-DATE

11342 SEP 21 99

FPSC-RECORDS/REPORTING

MOTIONS

On December 11, 1998, ANC timely responded to Order No. PSC-98-1555-SC-TI. 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 also filed a Motion for Leave to File Amended Response to Order to Show Cause. No objections were filed to the motions. The ongoing investigation into the alleged rule violations and the settlement discussions 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 because no objections were filed, we find it appropriate to grant ANC's motions.

SETTLEMENT

On June 28, 1999, ANC submitted its revised offer of settlement. (Attached hereto and incorporated herein as Attachment A) Its settlement offers 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

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the amount of \$10,000 on December 1, 1999, May 1, 2000, and December 1, 2000.

We find that ANC's settlement offer has satisfactorily addressed each of our concerns. Moreover, the company has been very cooperative in resolving all issues. OPC has no objections to the proposed settlement.

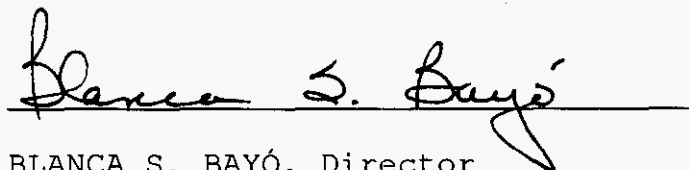
Therefore, we find the terms of the settlement agreement to be fair and reasonable. Accordingly, the settlement, including the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, in the amount of \$30,000 payable in three installments each on or before December 1, 1999, May 1, 2000, and December 1, 2000, is approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the offer of settlement dated June 28, 1999, by American Nortel Communications, Inc. is hereby approved. It is further

ORDERED that this docket should remain open pending the remittance of the \$30,000 voluntary contribution. The voluntary contribution will be remitted in installment 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.

By ORDER of the Florida Public Service Commission this 21st day of September, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CBW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

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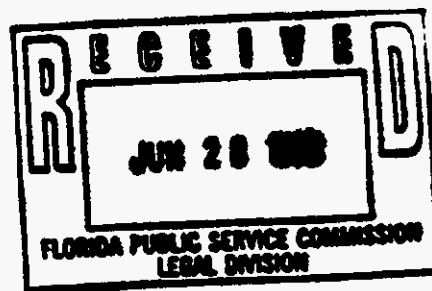
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June 28, 1999

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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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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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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/rt

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