

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Atlantic Telephone Company, Inc. for apparent violation of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection (formerly Interexchange Carrier Selection), and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

DOCKET NO. 991305-TI
ORDER NO. PSC-99-2167-SC-TI
ISSUED: November 8, 1999

The following Commissioners participated in the disposition of this matter:

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

ORDER TO SHOW CAUSE

BY THE COMMISSION:

I. Background

On March 22, 1999, we received notification from a former employee that Atlantic Telephone Company, Inc. (Atlantic or the company) decided to let Frontier Communications (Frontier) carry its traffic in lieu of carrying it over its own lines, which resulted in numerous customers being slammed. This happened because Atlantic had turned the customer's telephone number off in its switch in lieu of deleting customer information from its database when a customer left its company. This procedure made it easier if Atlantic were to try to win the customer back at a later date. Consequently, when Atlantic downloaded its customer information to Frontier, its new underlying carrier, all customer information was downloaded, including the potential "win back" customers that were not deleted from its database. This resulted in former customers being changed back to Atlantic without authorization.

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FPSC-RECORDS/REPORTING

Atlantic stated in its response to the customer complaints that it expected payment in full for services rendered. In response to Atlantic's position, we mailed Atlantic a certified letter on July 30, 1999, and stated that Atlantic's position that customers are expected to pay in full for services rendered is an apparent violation of Rule 25-4.118, Florida Administrative Code, and to ensure compliance with the rule, Atlantic should take immediate action to credit customers' accounts in accordance with the rule. The letter was signed for and received on August 2, 1999. Although Atlantic did call our staff and agreed not to pursue collection of the monies due it, the information was never provided in writing as requested. Atlantic also failed to notify us of any rerates and credits issued.

The Division of Administration mailed regulatory assessment fee forms to Atlantic on December 10, 1998. In addition, delinquent notices were mailed on March 17, 1999. To date, the delinquent regulatory assessment fees, including statutory penalties and interest, have not been paid.

II. Apparent Violations

a. Authorization Required to Change Provider

Section (1) of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, states in pertinent part:

The primary interexchange company (PIC) of a customer shall not be changed without the customer's authorization.

Customer complaints related to this problem were forwarded to Atlantic for response upon receipt by this Commission. Atlantic responded to the complaints by stating that in the process of changing its underlying carrier, the company switched its past customers to its new underlying carrier. Atlantic further stated that as it became aware of the problem through customer inquiries, it switched each customer back to the preferred carrier. We are, however, concerned that Atlantic was apparently aware of the potential problem before it occurred and took no action to prevent it. Atlantic's only action was to switch customers back to their preferred carrier after the unauthorized change occurred. Therefore, based on the 16 consumer complaints that have been determined to be apparent unauthorized carrier changes in relation

to this problem, it appears that Atlantic is in violation of Rule 25-4.118(1), Florida Administrative Code.

b. Rerating Charges

Section (5) of Rule 25-4.118, Florida Administrative Code, states in pertinent part:

Charges for unauthorized PIC changes and higher usage rates, if any, over the rates of the preferred company shall be credited to the customer by the IXC responsible for the error within 45 days of notification.

Atlantic stated that it expects payment in full for service rendered. Furthermore, it appears that Atlantic has not rerated the customers' bills nor issued credits for the difference in rates as required by our Rules. Therefore, we find an apparent violation of Rule 25-4.118(5), Florida Administrative Code.

c. Response to Commission Staff Inquiries

Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, requires a reply to staff inquiries be furnished in writing within 15 days of the Commission inquiry. Atlantic failed to notify staff of any rerates and credits issued in response to the July 30, 1999, letter. Atlantic also failed to respond in writing that it would not to pursue collection of the monies due the company as agreed in a telephone call. Finally, Atlantic failed to respond to a notice of past due regulatory assessment fees. Therefore, we find an apparent violation of Rule 25-4.043, Florida Administrative Code.

d. Regulatory Assessment Fees

Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts. Because Atlantic has not paid the regulatory assessment fees, including statutory penalties and interest, we find apparent violation of Rule 25-4.0161, Florida Administrative Code.

III. Conclusion

Pursuant to Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000 for each day a violation of a rule, statute, or order continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission or any provision of Chapter 364. Utilities are charged with knowledge of our rules and Florida Statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, we nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as CommEx's conduct at issue here, would meet the standard for a "willful violation." We find that CommEx's apparent conduct in switching preferred carriers without customer authorization and its failure to timely respond to Commission inquiries concerning customer complaints has been "willful" in the sense intended by Section 364.285, Florida Statutes.

Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company fails to comply with Commission rules.

Accordingly, Atlantic shall show cause in writing within 21 days of the issuance of this Order why it should not have certificate number 2697 canceled or be fined \$160,000 for apparent violation of Section (1) of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection (Formerly Interexchange Carrier Selection) as discussed in Section II.a. of this Order. In addition, Atlantic should submit a written report to staff within 90 days of the order becoming final of all customers that were switched without authorization to Atlantic that have not been switched back to their preferred carrier.

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Atlantic shall also show cause in writing within 21 days of the issuance of this Order why it should not be fined \$80,000 for apparent violation of Section (5) of Rule 25-4.118, Florida Administrative Code, that requires Atlantic to rerate customers affected by the unauthorized changes in service and to cease collection activity on these accounts as discussed in Section II.b. of this Order. We also find that Atlantic should complete the rerates and credits within 90 days of the issuance of this Order. In addition, Atlantic should submit monthly status reports due on the last day of each month to Commission staff until all rerates and credits have been issued.

We further order Atlantic to show cause in writing within 21 days of the date of this Order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, as discussed in Section II.c. of this Order.

Finally, we order Atlantic to show cause in writing within 21 days of the date of this Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, as discussed in Section II.d. of this Order.

If Atlantic timely responds to this Order, this docket shall remain open pending the resolution of the show cause proceeding. If Atlantic does not respond to the Commission's Order to Show cause, the fines shall be deemed assessed. If Atlantic fails to respond to this Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, Atlantic's certificate Number 2697 shall be canceled and the docket shall be closed.

Any fine monies received by the Commission will be forwarded to the Office of the Comptroller for deposit in the state General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

It is therefore,

ORDERED by the Florida Public Service Commission that Atlantic Telephone Company, Inc. shall show cause in writing within 21 days of the issuance of this Order why it should not have certificate number 2697 canceled or be fined \$160,000 for apparent violation of Rule 25-4.118(1), Florida Administrative Code, Local, Local Toll, or Toll Provider Selection (Formerly Interexchange Carrier Selection). It is further

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ORDERED that Atlantic Telephone Company, Inc. shall submit a written report to staff within 90 days of issuance of this Order of all customers that were switched without authorization to Atlantic that have not been switched back to their preferred carrier. It is further

ORDERED that Atlantic Telephone Company, Inc. should show cause in writing within 21 days of the issuance of this Order why it should not be fined \$80,000 for apparent violation of Rule 25-4.118(5), Florida Administrative Code, to rerate customers affected by the unauthorized changes in service and to cease collection activity on these accounts. It is further

ORDERED that Atlantic Telephone Company, Inc. shall complete the rerates and credits within 90 days of the issuance of this Order. In addition, Atlantic shall submit monthly status reports due on the last day of each month to the Commission until all rerates and credits have been issued. It is further

ORDERED that Atlantic Telephone Company, Inc. shall show cause in writing within 21 days of the date of this Order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code. It is further

ORDERED that any response to this Order to Show Cause filed by Atlantic Telephone Company, Inc. shall contain specific allegations of fact and law and shall identify the company name and this docket number. It is further

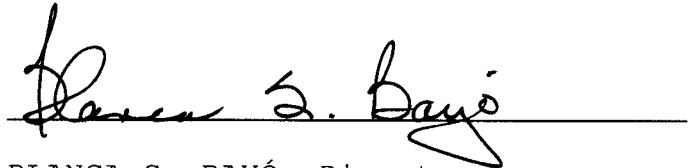
ORDERED that failure by Atlantic Telephone Company, Inc. to respond to this Order to Show Cause in the manner and date set forth in the "Notice of Further Proceedings and Judicial Review" section of this Order shall constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and the fines will be deemed assessed. It is further

ORDERED that all outstanding Regulatory Assessment Fees, penalties, and interest shall remain due and owing. It is further

ORDERED that upon payment of the fines or cancellation of the certificate, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 8th day of November, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 29, 1999.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida

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Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

M E M O R A N D U M

November 5, 1999

RECEIVED-FPSC

99 NOV -8 AM 10:43

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CALDWELL) *DK*

RE: DOCKET NO. 991305-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST ATLANTIC TELEPHONE COMPANY, INC. FOR APPARENT VIOLATION OF RULE 25-4.118, F.A.C., LOCAL, LOCAL TOLL, OR TOLL PROVIDER SELECTION (FORMERLY INTEREXCHANGE CARRIER SELECTION), AND RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

2167 -SC

Attached is an Order to Show Cause to be issued in the above-referenced docket. (Number of pages in order - 7)

DWC/sa
Attachment
cc: Division of Communications (Biegalski)
I:991305or.dwc

1 certified,