



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

DATE: AUGUST 17, 2000

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

FROM: DIVISION OF LEGAL SERVICES (CALDWELL) *one bk*
DIVISION OF COMPETITIVE SERVICES (M. WATTS) *RR for MW*

RE: DOCKET NO. 000218-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST ALTERNATIVE TELECOMMUNICATIONS SERVICES, INC. D/B/A SECOND CHANCE PHONE FOR APPARENT VIOLATION OF SECTION 364.183(1), F.S., ACCESS TO COMPANY RECORDS.

AGENDA: 08/29/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\000218S1.RCM

CASE BACKGROUND

- April 18, 1998 - Alternative Telecommunications Services, Inc. d/b/a Second Chance Phone (ATSI) obtained Florida Public Service Commission Alternative Local Exchange Company Certificate Number 5620.
- June 25, 1999 - Staff mailed a certified letter requesting information necessary for inclusion in the local competition report required of the Commission by Section 364.386, Florida Statutes. Staff requested a response by August 6, 1999.
- July 6, 1999 - ATSI signed for and received the certified letter.

DOCUMENT NUMBER-DATE

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- December 6, 1999 - Staff sent a second certified letter requesting that ATSI respond to the data request no later than December 22, 1999.
- February 21, 2000 - After receiving no response to its June 25, 1999, and December 6, 1999, certified letters, staff opened this docket to investigate whether ATSI should be required to show cause why it should not be fined or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.
- April 12, 2000 - Commission Order No. PSC-00-0679-SC-TX was issued to require ATSI to show cause why it should not be fined or have its certificate canceled for apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records.
- April 25, 2000 - ATSI submitted its response to Commission Order No. PSC-00-0679-SC-TX.
- June 6, 2000 - Agenda Conference - ATSI's response to Commission Order No. PSC-00-0679-SC-TX was rejected by the Commission.
- June 12, 2000 - PAA Order No. PSC-00-2031-PAA-TX was issued rejecting ATSI's response to Show Cause Order No. PSC-00-0679-SC-TX and ordering its certificate to be canceled.
- July 3, 2000 - ATSI filed a protest of PAA Order No. PSC-00-2031-PAA-TX (Attachment A, pages 7-10).
- July 14, 2000 - ATSI met with staff to explore the possibilities of a settlement offer that would convince staff and the Commission that it be allowed to remain in business as a telecommunications services provider in Florida.
- August 7, 2000 - ATSI submitted a settlement offer (Attachment B, pages 11-14).

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept ATSI's offer of settlement to resolve the apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records, in lieu of cancellation of its certificate and refer ATSI to the appropriate authority for disposition of its apparent violation of Section 837.06, Florida Statutes?

RECOMMENDATION: Yes. The Commission should accept the company's settlement proposal and refer the company to the appropriate authority for disposition of the apparent violation of Section 837.06, Florida Statutes. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission's 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 of Florida General Revenue Fund pursuant to Section 364.285 (1), Florida Statutes. 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 should be closed. Whether or not the company meets the terms of the settlement offer, or if the Commission accepts or rejects the settlement offer, the Commission should refer ATSI to the appropriate authority for apparent violation of Section 837.06, Florida Statutes, within 30 days from the issuance date of the Commission's Order. No precedent will be established by the Commission due to acceptance of a settlement in this case. (M. Watts)

STAFF ANALYSIS: Staff sent a certified letter requesting information contained in company records to ATSI on June 25, 1999, and requested a written response by August 6, 1999. Staff did not receive the requested information from ATSI. Staff sent a second certified letter requesting the information to ATSI on December 6, 1999, and requested a written response by December 22, 1999. Staff did not receive the requested information from ATSI in apparent violation of Section 364.183(1), Florida Statutes, Access to Company Records. Therefore, on February 21, 2000, staff opened this docket to require ATSI to show cause why it should not be fined or have its certificate canceled, pursuant to Section 364.285, Florida Statutes.

On April 25, 2000, ATSI sent its response to Commission Order No. PSC-00-0679-SC-TX. Upon analyzing the documents submitted by ATSI as proof that it had sent the required data, staff noticed some irregularities that indicated the documents had been altered. In particular, the copy of the air bill provided by ATSI appeared

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to have been altered. Staff contacted the shipping company and received a copy of the original air bill. Comparison of the two air bills indicated that the one from ATSI had been altered to make it appear it was sent to "W. DHASSLER" and indicated that the package contained information related to "EXCHANGE INFORMATION." However, a copy of the original air bill, as submitted by Airborne Express, indicated that it was addressed to "RAY KENNEDY" and the contents were in regard to "dba INFORMATION," which was the subject of a previous matter with the company, but totally unrelated to the data request. Both air bills are dated November 7, 2000.

On June 6, 2000, the Commission approved staff's recommendation that ATSI's certificate be canceled, its customers be notified in a prescribed manner, and it be referred to the appropriate authority for disposition of the apparent violation of Section 837.06, Florida Statutes. The President of ATSI appeared before the Commission during the Agenda Conference and admitted that staff's findings were accurate. The Commission issued Order No. PSC-00-2031-PAA-TX on June 12, 2000, to cancel ATSI's certificate.

On July 3, 2000, ATSI filed a protest of the PAA order and subsequently met with staff on July 14, 2000, to discuss the case. On August 7, 2000, ATSI submitted a settlement offer.

In its settlement offer, ATSI stated it provides local phone services as an alternative local exchange company to customers who are otherwise unable to obtain phone service from the incumbent Local Exchange Company. It stated that it has a customer base of approximately 3,000 and a good record of customer care. It believes that, given its record and the nature of the service it provides, cancellation of its certificate would result in confusion and frustration for its customers and would be directly contrary to the public interest. ATSI also claims that the business is family owned and if it loses its certificate, it would create financial hardship for those family members that were unaware of the circumstances surrounding this docket. Therefore, ATSI has proposed the following in lieu of having its certificate canceled in accordance with Commission Order No. PSC-00-2031-PAA-TX:

- A voluntary contribution to the General Revenue Fund in the amount of \$25,000.
- Assurance that it will promptly provide all information sought by staff.

- Participation by the company's president in a meeting with staff no later than 90 days after issuance of the Commission's Order approving ATSI's settlement offer, to review and demonstrate understanding of the rules that pertain to the provisioning of alternative local exchange services in Florida.

Given the serious nature of ATSI's actions, staff has been cautious in making its decision to recommend acceptance by the Commission of ATSI's proposed settlement offer. Because ATSI's president admitted that staff's findings in this docket were factual and based on representations made by ATSI's president and legal counsel, ATSI has convinced staff that it will honor the proposed settlement offer and will henceforth deal honestly with the Commission. Staff believes that the \$25,000 proposed by ATSI as a voluntary contribution to the General Revenue Fund is sufficient in magnitude to convince ATSI that its obligations to honestly deal with Commission matters is of utmost importance.

Staff has also given consideration to the public in making its recommendation to the Commission to accept ATSI's offer. Staff is concerned that if ATSI would intentionally make false statements to the Commission, how would it treat its customers? In reviewing consumer complaints filed with the Commission, staff finds no complaints that would indicate ATSI has caused significant harm to any consumer. Furthermore, if ATSI's future actions causes harm to consumers, staff can initiate appropriate action. It is staff's belief that ATSI has learned from this experience and will diligently work to abide with the rules of the Commission. Staff believes that the terms of the settlement agreement as summarized in this recommendation will provide incentive for ATSI to henceforth operate within the law and we support ATSI's offer of settlement.

Therefore, staff believes that the Commission should accept the company's settlement proposal and refer ATSI to the appropriate authority for disposition of the apparent violation of Section 837.06, Florida Statutes. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission's 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 of Florida General Revenue Fund pursuant to Section 364.285 (1), Florida Statutes. 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 should be closed. Whether or not the company meets the terms of the settlement offer, or if the Commission accepts or rejects the settlement offer, the Commission

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should refer ATSI to the appropriate authority for apparent violation of Section 837.06, Florida Statutes, within 30 days from the issuance date of the Commission's Order. No precedent will be established by the Commission due to acceptance of a settlement in this case.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. With the approval of Issue 1, this docket should remain open pending the remittance of the \$25,000 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the Commission Order, the company's certificate should be canceled, and this docket should be closed. **(Caldwell)**

STAFF ANALYSIS: With the approval of Issue 1, this docket should remain open pending the remittance of the \$25,000 voluntary contribution. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of the Commission Order, the company's certificate should be canceled, and this docket should be closed.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause
proceedings against Alternative
Telecommunications Services, Inc.
d/b/a Second Chance Phone for
apparent violation of Section
364.183(1), F.S., Access to
Company Records

Docket No. 000218-TX

Filed: July 3, 2000

Protest of Proposed Agency Action Order No. PSC-00-0231-PAA-TX

Alternative Telecommunications Services, Inc., d/b/a Second Chance Phone (ATSI), pursuant to rules 25-22.029 and 28-106.201, Florida Administrative Code, files this protest of PAA Order No. PSC-00-0231-PAA-TX. As grounds therefor, ATSI states:

Introduction

1. The name, address and telephone number of ATSI is:

Alternative Telecommunications Services, Inc.
c/o Mike Rodgers
9210 Weatherly Road, Suite 100
Brooksville, Florida 34601
1-800-797-0266

2. The name, address and telephone number of Petitioner's representative who should receive all pleadings, notices, correspondence and other information related to this docket is:

Vicki Gordon Kaufman
McWhirter Reeves McGlothlin Davidson Decker Kaufman Arnold & Steen, PA
117 South Gadsden Street
Tallahassee, Florida 32301
1-850-222-2525

Substantial Interests

3. In the proposed order which is the subject of this petition, the Commission proposes

to cancel ATSI's certificate No. 5620 and to require ATSI to inform its customers that it can no longer provide local telecommunications services and to cease providing such service. ATSI has a significant customer base in Florida and cancellation of its certificate would greatly affect its substantial interests. This is the first show cause proceeding in which ATSI has been involved and the sanction of cancellation is very harsh considering that this is this company's first offense.

How Notice of Agency Action was Received

4. ATSI received notice of the Commission's proposed action when the proposed agency action order was received by mail.

Disputed Issues of Fact

5. Facts in dispute include, but are not limited to, the following:

- a. Whether the sanction of certificate cancellation is appropriate given the facts and circumstances of this particular case.

Ultimate Facts Alleged and Rules and Statutes Entitling Petitioner to Relief

6. Ultimate facts alleged include, but are not limited to, the following:

- a. ATSI's certificate should not be canceled given the facts and circumstances of this case.

7. Rules and statutes entitling Petitioner to relief include, but are not limited to, the following:

- a. Section, 364.01, Florida Statutes;
- b. Rule 28-106.201, Florida Administrative Code;
- c. Rule 28-106.201, Florida Administrative Code.

Demand for Relief

6. ATSI demands the following relief:
 - a. That ATSI's certificate not be canceled; and
 - b. That the Commission provide such other relief as it deems appropriate.

WHEREFORE, ATSI requests that the Commission schedule an informal meeting in this matter followed by a hearing on this matter if necessary as soon as possible and grant such other relief as is necessary and just.

Vicki Gordon Kaufman

Vicki Gordon Kaufman
McWhirter Reeves McGlothlin Davidson
Decker Kaufman Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
1-850-222-2525

Attorneys for Alternative
Telecommunications Services, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Protest of Proposed Agency Action Order No. PSC-00-0231-PAA-TX** was provided by (*) hand delivery or U.S. Mail this 3rd day of July, 2000 to the following:

(*) Diana Caldwell
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399


Vicki Gordon Kaufman

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ATTACHMENT B

2000 AUG -7 AM 11:12
MCWHIRTER REEVES
ATTORNEYS AT LAW

DIVISION OF
TAMPA ~~OFFICE~~ COMPETITIVE SERVICES
400 NORTH TAMPA STREET, SUITE 2436
TAMPA, FLORIDA 33602-5126
P.O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 Fax

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 Fax

August 7, 2000
Via Hand Delivery

Ms. Diana Caldwell
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Alternative Telecommunications Services, Inc., Docket No. 000218-TX, PAA Order
No. PSC-00-0231-PAA-TX (corrected PAA Order No. PSC-00-2031-PAA-TX)

Dear Diana:

Introduction

In the above docket, the Commission issued PAA Order No. PSC-00-0231-PAA-TX on June 12, 2000.¹ The PAA ordered that Alternative Telecommunications Services, Inc.'s (ATSI) Certificate No. 5620 be canceled and that this matter, involving the provision of information to the Commission, be referred to the State Attorney's Office. On July 3, 2000, ATSI filed a protest of the order alleging, in part, that cancellation of its certificate was too harsh a remedy given the alleged violation and the fact that this was ATSI's first show cause offense.

The order protested stems from ATSI's failure to respond to a Commission inquiry and subsequent alleged alteration of an air bill document in an attempt to make it appear as though ATSI had actually responded. ATSI is well aware of the seriousness of the situation and wants to take all possible steps to remedy the matter and to assure the Commission that this will not occur again. Mike Rodgers, President of ATSI, and I met with you and Staff on July 14, 2000 to discuss the case. We further discussed the matter by telephone on August 4. You asked that we put any offer of settlement in writing and such offer follows.

¹On July 3, 2000, the Commission corrected the order number to Order No. PSC-00-0231-PAA-TX.

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Circumstances of this Case

ATSI is a certified ALEC which provides prepaid local calling service in Florida. ATSI provides services to customers who, for whatever reason (bad credit history, insufficient funds for deposit. . .), are unable to secure local service from other local companies. Thus, ATSI provides a valuable product for certain consumers.

It is ATSI's belief that certificate cancellation would be contrary to the public interest and is simply too harsh a remedy given the situation in this case. As noted above, ATSI provides service to customers who have difficulty obtaining local service in other ways. If the Commission were to cancel ATSI's certificate, some 3,000 customers would be forced to choose a different provider. ATSI has a history of working diligently with its customers to ensure that they are provided with the services they need. If ATSI's certificate is canceled, its ability to do so would obviously be curtailed and these customers' services canceled. It should be noted that the matter at issue in this docket does *not* concern customer complaints or service quality; thus, customers' interests would be harmed if ATSI's certificate were canceled.

ATSI recognizes that the Commission would require it to provide customers with notice of the cancellation in time for them, *in theory*, to choose another provider. However, *in reality*, many customers will not understand the notice and will be confused and frustrated because they will be unable to continue to receive service from the company which they have chosen and who has provided quality service to them in the past. Despite all efforts to inform consumers of the situation, many customers will not understand and will panic regarding loss of telephone service. Thus, cancellation would be directly contrary to the public interest.

As to the severity of the remedy suggested, ATSI notes that it has been in business in Florida since April 17, 1998. It has a customer base of approximately 3,000 customers at this time and during its time in business has served approximately 8,400 customers (the difference being accounted for by customer attrition). During the course of its provision of services in Florida, ATSI has had only six (6) customer inquiries filed at the Commission and each has been found to be without merit. This demonstrates that ATSI has a history of providing quality service to consumers fairly and efficiently. It hopes to be able to continue to do so in the future. Further, ATSI has an excellent payment history to the incumbents from whom it buys services for resale.

Additionally, ATSI is entirely a small family business, owned by Mr. Rodgers. Though no excuse, Mr. Rodgers was unfamiliar with the Commission's regulatory process and quite fearful when he received notice that he was not in compliance with Commission rules. To his credit, he

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owned up to his mistake and has taken responsibility for it. Also, Mr. Rodgers has familiarized himself with the Commission's regulations and processes and has retained legal counsel to advise ATSI on regulatory matters.

Further, ATSI has five employees, all of whom are relatives of Mr. Rodgers and who have left other jobs to work for ATSI. ATSI has invested over \$140,000 in billing software, phone systems and computer equipment in the past three years. Mr. Rodgers' entire savings and those of his family members are invested in the business. It would be absolutely devastating to Mr. Rodgers and his family if ATSI's certificate were canceled and ATSI could no longer conduct business in Florida. Given the circumstances of this case, particularly, Mr. Rodgers' extreme remorse over the entire situation and the fact that it is totally out of character, cancellation of the certificate, resulting in total financial devastation to him and his family, is simply too harsh a remedy.

Finally, Staff expressed concern that acceptance of a settlement in this case might result in unacceptable precedent. ATSI suggests that the circumstances of this case are unique and would create no precedent for future cases. ATSI, of course, would not object to such a statement in any order disposing of this case.

Offer of Settlement

Given the above, for purposes of settlement, ATSI offers the following:

- ATSI will make a voluntary contribution to the General Fund in the amount of \$25,000;
- ATSI will, in the future, promptly provide all information sought by Staff;
- The president of ATSI will meet with Commission Staff no later than 90 days after the order approving ATSI's settlement offer is issued. In that meeting, the president of ATSI will participate in a discussion with Staff of ATSI's understanding of the Commission rules pertaining to an ALEC's provision of service in Florida.

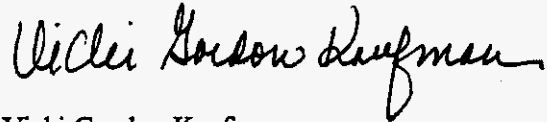
If the settlement terms delineated above are accepted and approved by the Commission, ATSI's certificate will not be canceled.

McWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON, DECKER, KAUFMAN, ARNOLD & STEEN, P.A.

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We remain available to discuss this settlement with you if you desire and look forward to working with you to resolve this matter. Thank you for your consideration.

Sincerely,



Vicki Gordon Kaufman

cc: Mr. Ray Kennedy
Ms. Melinda Watts
Mr. Mike Rodgers