

LAW OFFICES
MESSER, CAPARELLO & SELF
A PROFESSIONAL ASSOCIATION

215 SOUTH MONROE STREET, SUITE 701
POST OFFICE BOX 1876
TALLAHASSEE, FLORIDA 32302-1876
TELEPHONE: (850) 222-0720
TELECOPIER: (850) 224-4359
INTERNET: www.lawfla.com

September 26, 2001

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 010409-TL

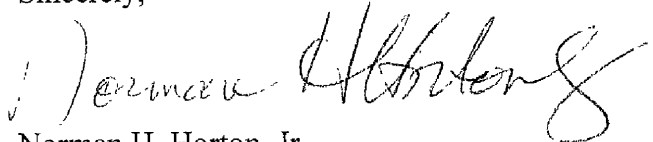
Dear Ms. Bayó:

Enclosed for filing on behalf of Talk America are an original and fifteen copies of Talk America's Response to the Florida's Citizen's First Motion to Compel and Request for *In Camera* Inspection of Documents in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance with this filing.

Sincerely,



Norman H. Horton, Jr.

NHH/amb
Enclosures
cc: Parties of Record

DOCUMENT NUMBER 010409-TL
12180 SEP 26 2001
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by the Citizens of Florida)
To Investigate TALK.com Holding)
Company and The Other Phone Company) Docket No. 010409-TP
For Willful Violation of Rule 25-4.118,) Filed September 26, 2001
Florida Administrative Code)
_____)

RESPONSE TO CITIZENS' FIRST MOTION TO COMPEL AND REQUEST FOR *IN CAMERA* INSPECTION OF DOCUMENTS

COMES NOW Talk America, Inc. f/k/a Talk.com Holding Corp. d/b/a Network Services d/b/a The Phone Company and The Other Phone Company, Inc. d/b/a Access One Communications (collectively "Talk America") by and through its undersigned counsel, hereby files this response to Citizen's First Motion to Compel and Request for *In Camera* Inspection of Documents and as its response states:

INTRODUCTION

Armed with little more than a suspicion that there must be more information than has been provided already, the State of Florida's Office of the Public Counsel ("Public Counsel"), through its *First Motion to Compel and Request for In Camera Inspection of Documents* ("Motion") asks the Commission to compel Talk America (f/k/a "Talk.com," hereinafter "Talk America" or "the Company") to turn over privileged internal communications among its management personnel and company attorneys. The documents that Public Counsel seeks were prepared by a Company employee, at the direction of his superiors, for the express purpose of facilitating discussion among company officials and its attorneys regarding the operational and legal issues facing Talk America in a number of jurisdictions. These communications are entitled to protection under the attorney-client privilege, according to the standard articulated in

the in the case of *Southern Bell Telephone and Telegraph Company v J. Terry Deason et al.*, 632 So.2d 1377 (Fla. 1994) (“*Southern Bell*”). Moreover, Public Counsel's concern, as expressed in its Motion, that Talk America may be holding back information and documentation regarding slamming is unfounded. Throughout this proceeding, Talk America voluntarily has provided information and access to its anti-slamming processes and procedures, and has produced everything that was asked of it by both the Florida Public Service Commission (“Commission”) or the Public Counsel, whether formally or informally. As a result, the Commission should deny Public Counsel's motion for the production and inspection of these additional seven (7) documents, referred to as the “Meeting Minutes.”

BACKGROUND

1. On April 17, 2001, the Public Counsel filed a *First Set of Requests for Production of Documents to Talk.com and The Other Phone Company* (“First Set of Requests”) with the Commission in Docket No. 101409-TP to open an investigation against Talk America relating to instances of slamming. Talk America met with staff of the Commission on May 8, 2001 to address issues raised by the Public Counsel’s filing and filed a comprehensive complaint analysis with the Florida Commission on June 4, 2001. Attachment A hereto. The Public Counsel later filed a *Second Set of Requests* for purely procedural reasons, in order to receive a proprietary version of the analysis filed by Talk America with the Florida Commission on June 4, 2001. The Public Counsel subsequently modified these data requests. At the Company’s invitation, on July 6, 2001, Commission staff attended a site tour of Talk America’s customer service center in Palm Harbor, Florida. On July 25, 2001, Talk America filed its *Objections and Responses to the OPC’s First Set of Requests*, together with a *Request for Temporary Protective*

Order for documentation provided by the Company in response to the OPC's *First Set of Requests*. The Company later supplemented its responses on July 25 and on July 27, 2001. The Company again voluntarily met with the Commission and the Public Counsel on August 8, 2001 to discuss outstanding issues and a possible resolution to this investigation. On that date, the Public Counsel issued its *First Set of Interrogatories* to Talk America and a *Third Set of Requests for Production of Documents*. The Company filed its responses on September 18, 2001. On September 20, 2001, the staff of the Commission filed a memorandum recommending that the Commission order Talk America to show cause why it should not be fined for certain alleged violations of Florida customer verification and billing rules.

2. Of direct significance to this Motion, on August 7, 2001, Talk America provided the Public Counsel with documents responsive to Question #3 of the Public Counsel's First Set of Requests for Production of Documents to Talk.com and the Other Phone Company. The documents produced included a Privilege Log ("August 7, 2001 Privilege Log") identifying fourteen (14) documents the Company considers privileged and, thus, subject to Talk America's right to assert an attorney-client confidentiality privilege. Subsequent to that filing, the Public Counsel expressed some doubt as to whether certain of the documents (specifically, Documents 4, 5, 7, 9, 10, 12, and 13 on the log, or collectively, "Meeting Minutes") identified in the August 7, 2001 Privilege Log qualified for the attorney-client privilege. On September 4, 2001, Talk America provided a letter ("September 4 Letter") to the Public Counsel, fully explaining its claim of privilege for the "Meeting Minutes" documents. Attachment B hereto. On September 13, 2001, the Public Counsel filed a *First Motion to Compel and Request for In Camera Inspection of Documents* ("Motion"), to which the Company now responds.

3. As the preceding paragraphs demonstrate, throughout the course of this investigation, Talk America has been thoroughly responsive to both the Commission and the Public Counsel. The Company has fully responded to all requests for information and documentation, voluntarily has conducted and provided an analysis of all complaint issues in the State of Florida, has attended several meetings with staff of both the Commission and the Public Counsel that the Company voluntarily requested, and even has offered for staff to inspect the Company's customer services premises. The Company is hardly, in the words of the Public Counsel, attempting to "cloak[] information with the attorney-client privilege in order to avoid discovery." (Motion at 3)

RESPONSE

4. In the Public Counsel's Motion, it requests the Prehearing Officer to conduct an *in camera* inspection of the seven "Meeting Minutes" documents. The Public Counsel's claim that such documents do not fall within the attorney-client privilege as interpreted by the court in the *Southern Bell* case because "each of these documents was created by a person who was not an attorney and was distributed to some undisclosed number of 'multiple corporate recipients.'" (Motion at 3-4).

5. The Company fully acknowledges that the author of the meeting minutes, Mr. Benedict (Benjamin) P. Serzo, is not an attorney. Indeed, this was clearly stated in Talk America's September 4 Letter. Mr. Serzo is the Director of Operations for Talk America, responsible for collecting and facilitating requests for legal advice generated by other corporate employees based upon issues that have arisen in the course of conducting business that necessitate legal counsel. As stated in the September 4 Letter, in his role as a coordinator and

recorder of the requests for legal advice and the substantive issues raised by various corporate employees and its attorneys for ultimate discussion between the attorneys and the employees of Talk America at the bi-weekly unbundled network element platform (“UNE-P”) or “local call” meeting, Mr. Serzo was directed to create and obtain the Meeting Minutes. These records, which contain a detailed agenda of the issues discussed between the employees and their counsel at monthly meetings, reflect the notes of clients seeking advice from their counsel. As fully explained in Talk America’s September 4 Letter, these communications clearly fit within the five (5) prong test established in the *Southern Bell* case. Accordingly, and in light of the attorney-client privilege, these documents should not be subject to disclosure.

6. The Public Counsel further claims in its Motion that “the mere inclusion of one or two attorneys among the ‘multiple corporate recipients’ does not make the communication privileged.” (Motion at 4). Such a statement reveals the Public Counsel’s lack of basic understanding of the communications involved. As clearly explained in the Company’s September 4 Letter, the Meeting Minutes reflect a record of conversations between Talk America employees and attorneys for the Company in preparation for meetings to be held for the *primary purpose of* providing and obtaining specific legal advice regarding the issues raised in the meetings and identified in the Meeting Minutes. The Talk America attorneys participate in the local call to make certain that all corporate operations are conducted lawfully -- their sole purpose on the call is to provide legal advice regarding matters set forth on the Meeting Minutes agenda. The Meeting Minutes record and the subsequent meetings that occurred would not have occurred *but for the presence of the attorneys*. These facts satisfy the second prong of the court’s attorney-client test for privileged communications in the *Southern Bell* case. The

Company incorporates by reference the analysis provided in its September 4 Letter, in which all of the other prongs of this test also have been shown to be satisfied.

7. Moreover, far from merely including” “one or two attorneys” among the multiple recipients, the Meeting Minutes were created for the purpose of ensuring that legal advice could be sought and obtained by Talk America’s corporate employees. Significantly and as a point of fact, the Company only employs three (3) in-house attorneys. Given this fact, the vast majority of the Company’s counsel – two out of three, the General Counsel and the Associate General Counsel -- in fact were recipients of the Meeting Minutes – a fact that reflects no “mere inclusion” designed to, in the words of the Public Counsel, “cloak[] information with the attorney-client privilege in order to avoid discovery,” (Motion at 3) but rather, the deliberate seeking of the advice of legal counsel for the issues identified by corporate employees in the Meeting Minutes. For all of the foregoing reasons, the Company respectfully requests that the Public Counsel’s Motion be denied.

8. The Public Counsel also has requested the *in camera* inspection of these Meeting Minutes by the Prehearing Officer. Given the above-stated position of Talk America that the Meeting Minutes are subjected to the attorney-client privilege, Talk America respectfully submits that the law does not compel the Company to permit the disclosure of such documents to any outside third party. Accordingly, Talk America respectfully requests that the Prehearing Officer deny the Public Counsel’s Request for *in camera* inspection.

9. Additionally, and as an aside, the Public Counsel complains that Talk America has provided “nothing of substance in response to our request for all documents analyzing, evaluating, or otherwise commenting on the extent or causes of slamming customers in Florida. .

. . [T]hey provided nothing specifically analyzing or commenting on their own slamming problems.” This claim is patently false. On June 4, 2001, the Company *voluntarily* provided both the staff of the Commission and the Public Counsel with a comprehensive analysis of all of the customer verification, billing cancellation and provisioning problems that it has experienced to date in the State of Florida. This is *precisely* the type of documentation to which the Public Counsel refers. On pages 8-11 of that submission, the Company specifically outlined all of the verification (“slamming”) problems and issues that have arisen in the course of the past year, and the many steps that the Company has taken to combat slamming in the State of Florida and nationwide. In that document, the Company further analyzed and identified all complaints received from Florida customers from January 2000 through May 2001 by type and by date of sale, to provide the Commission and the Public Counsel with detailed information regarding the percentages of slamming complaints, among other types of complaints. If this is not a document of “substance” responding to the Public Counsel’s “request for all documents analyzing, evaluating, or otherwise commenting on the extent or causes of slamming customers in Florida,” then the Company indeed is at a loss as to what documentation would satisfy the Public Counsel.

10. As still another aside, the Public Counsel declare that “[i]t doesn’t make sense that a company that has received so many complaints about slamming would have so little information documenting their efforts to reduce or eliminate slamming.” (Motion at 4). The suggested implication that Talk America is not aggressively monitoring slamming issues and complaints is completely false. As previously mentioned, the Company provided the Commission and the Public Counsel with its most comprehensive analysis to date on all of the policies and

procedures that it has taken to combat and prevent instances of slamming. It indeed is working very hard on many fronts to educate its staff and to enforce its zero-tolerance policy against slamming.

11. While this policy is extremely important to the Company, as a point of fact, and as clearly depicted in the Company's analysis of Florida complaints received from January 2000 through May 2001, only approximately one-third of complaints received in Florida related to customer verification disputes. Significantly, of that one third, approximately sixteen percent (16%) of the complaints related to verification disputes for which the Company had validly authorized LOAs (the "Customer Wrong" category). Another fourteen percent (14%) related to the Number Mismatch problem with the Company's promotional checks, which as explained in the June 4 submission, was an error that occurred due to incorrect billing telephone numbers on certain promotional checks sent to prospective customers and to the resulting failure of the signatory to correct erroneous information on the check. Accordingly, in nearly one half of the slamming complaints filed against the Company in Florida the customers were wrong, which hardly necessitates an in-depth analysis on the part of the Company; in nearly the other half of the slamming complaints, the complaints resulted from a promotional check problem which the Company thoroughly analyzed in its June 4 submission, has since corrected, and for which the Company had valid, if mistaken, customer authorizations in which none of the Commission's or FCC's verification procedures were violated.

12. In sum, therefore, while the Company may have received a number of complaints about slamming, as a point of fact, many such complaints either were invalid and thus did not

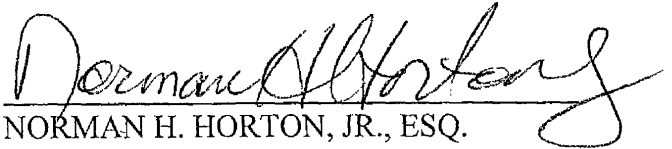
necessitate an in-depth analysis, or were thoroughly analyzed for the Commission on a prior occasion.

13. Finally, while it may not “make sense” to the Public Counsel, the fact is that not every Company conducts *all* of its business via written records. Talk America’s corporate business practices rely on extensive use of AOL’s Instant Messaging (“IM”) service, for which no records are available and internal telephone usage, for which no written record of the conversation exists. Moreover, due to the Company’s business relationship with AOL, many of Talk America employees use AOL as their primary email address. Because AOL’s email system does not permit the retention of old emails, none of these are available for production.

CONCLUSION

For all of the reasons stated above, Talk America respectfully requests that the Motion of the Public Counsel to Compel the production of documents and the Request for In Camera Inspection of Documents be denied.

Respectfully submitted,



NORMAN H. HORTON, JR., ESQ.
Messer, Caparello & Self, P.A.
P. O. Box 1876
Tallahassee, Florida 32302
(850) 222-0720

Attorneys for Talk America, Inc.

LAW OFFICES
MESSER, CAPARELLO & SELF
A PROFESSIONAL ASSOCIATION

215 SOUTH MONROE STREET, SUITE 701
POST OFFICE BOX 1876
TALLAHASSEE, FLORIDA 32302-1876
TELEPHONE: (850) 222-0720
TELECOPIER: (850) 224-4359
INTERNET: www.lawfla.com

June 4, 2001

BY HAND DELIVERY

Ms. Blanca Bayó, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

RE: Docket No. 010564-TX

Dear Ms. Bayó:

During a conference with Commission Staff regarding this docket, Talk America, Inc., f/k/a Talk.com Holding Corp. d/b/a Network Services d/b/a The Phone Company and The Other Phone Company d/b/a Access One Communications ("Talk America" collectively), was requested to provide an analysis of consumer complaints which had been filed with the PSC. That analysis has been completed and is attached hereto.

The analysis represents work product of Talk America and certain information contained within the analysis and exhibits is considered confidential and proprietary business information that should be exempt from public disclosure. Pursuant to section 364.183(1), Florida Statutes, Talk America herewith claims that certain information contained in the analysis prepared at the request of Staff contains information considered to be and treated as proprietary, confidential business information exempt from section 119.07(1) and section 24(a), Article 1, of the State Constitution. Pursuant to Rule 25-22.0006(5), Florida Administrative Code, in the attached envelope identified as Exhibit "A" is one paper copy of Talk America's response with the confidential information highlighted. Attached as Exhibit "B" are two paper copies of Talk America's response with the confidential information redacted. Parties of record are being provided a copy of the redacted filing.

ATTACHMENT A

Ms. Blanca Bayó
June 4, 2001
Page 2

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Norman H. Horton, Jr.", written in black ink.

Norman H. Horton, Jr., Counsel for Talk America, Inc.

NHH/amb
Enclosures

cc: Charles Beck, Esq.
Mary Ann Helton, Esq.
Francie McComb, Esq.
Steven A. Augustino, Esq.
Mr. Rick Moses
Mr. Ray Kennedy

TALK AMERICA ANALYSIS OF CUSTOMER COMPLAINTS FILED WITH THE
FLORIDA PUBLIC SERVICE COMMISSION
JUNE 1, 2001

The following Analysis provides a brief narrative of the genesis of Talk America Inc. ("the Company"), its service offerings and its corporate growth since its founding in 1989. In addition, this Analysis identifies and analyzes the various issues and problems that the Company has encountered in the past year, as it embarked upon its mission to offer facilities-based local exchange services via an unbundled network element platform ("UNE-P") to its existing long distance and international telecommunications service offerings. This Analysis also describes the solutions that the Company has implemented to address these areas of concern and to avoid repeat occurrences of these or similar problems in the future.

I. BACKGROUND AND HISTORY OF COMPANY

A. LONG DISTANCE SERVICES

On May 17, 1989, Tel-Save, Inc. ("Tel-Save") was incorporated in the State of Pennsylvania as a close corporation for purposes of reselling long distance services throughout the United States. Tel-Save subsequently entered into an exclusive agreement with AT&T to provide Tel-Save with the network services necessary to enable it to expand its service offerings to customers nationwide. Tel-Save provided services via the resale of AT&T's Software Defined Network ("SDN"). This agreement between Tel-Save and AT&T formed the first carrier-to-carrier relationship in the history of the telecommunications industry to allow a non-facilities-based carrier to resell AT&T's facilities under the reseller's name.

On June 9, 1995, Tel-Save Holdings, Inc. ("Tel-Save Holdings") was incorporated in the State of Delaware. On April 26, 1999, Tel-Save Holdings became Talk.com Inc.

On September 21, 1995, the majority shareholders of Tel-Save contributed their shares in Tel-Save to Tel-Save Holdings, which consummated an initial public offering on the same date. At that time, Tel-Save Holdings became a publicly-traded company on the NASDAQ under the call letters of TALK. This additional financing enabled Tel-Save to become a facilities-based interexchange carrier ("IXC") and to invest millions of dollars to develop its One Better Network ("OBN").

Tel-Save's OBN features five (5) Company-owned Lucent 5ESS-2000 switches connected with AT&T digital transmission facilities. To ensure the quality and reliability that customers demand, OBN utilizes:

- AT&T Transmission facilities (leased lines)
- AT&T-Provided Operator Services
- AT&T World Wide Intelligent Network
- ACUS Bill Manager Service

OBN remains the network used by the Company at present.

On February 22, 1997, Talk.com announced an exclusive agreement with America Online and became the first telecommunications company to offer its services via an online "paper-less" sign-up program, which, by eliminating billing, maintenance and collections charges, has enabled the Company to market its telecommunications services at highly-competitive rates. Through this arrangement, America Online's customers and those that sign up directly for Talk.com's services on-line are charged for telephone calls on their credit card in lieu of receiving a phone bill in the mail. In addition to saving billing-related costs, this "paper-less" billing system enables customers to view their call detail and telephone billing information through the Internet in "real time" -- that is, within minutes of placing a call, customers may view a call's details on-line. Such "real time" monitoring assists customers in keeping track of their monthly telephone bills and of the individuals making calls from their billing telephone numbers ("BTNs"), etc. On May 1, 2001, the Company announced that its relationship with America Online will continue on a non-exclusive basis through June 2003.

The agreement with America Online has enabled Talk to offer a variety of low cost monthly service plans to its long distance customers. For example, its most popular plan offers long distance calls for 5¢/minute with a \$5.95 monthly service fee.

On May 21, 1999, Tel-Save changed its name to Talk.com Holding Corp. ("Talk.com"), the operating subsidiary of the holding company parent, Talk.com Inc. At its peak, Talk.com offered long distance services to approximately two (2) million customers nationwide, the vast majority of which are residential customers. That same year, Tel-Save Holdings changed its name to Talk.com, Inc.

B. ENTRY INTO LOCAL EXCHANGE SERVICES MARKET

In early 2000, Talk.com determined that its long distance residential customer base was interested in purchasing local exchange services from the Company, as a means of one-stop, bundled telecommunications shopping at low cost prices. With that in mind, the Company undertook to acquire a local exchange company that had operated a successful local telecommunications business on a UNE-P basis. The Company with the most UNE-P experience and the best corporate fit with Talk.com was Access One Communications, Inc. ("Access One"), a privately-held, facilities-based, local telecommunications service provider that has offered local exchange services since 1997 to mostly small and medium-sized business customers in those states served historically by BellSouth (*i.e.* Florida, Georgia, North Carolina, Alabama, Mississippi, Tennessee, South Carolina and Kentucky and Louisiana).

On March 24, 2000, prior to its actual acquisition of Access One, Talk.com entered into a Services Agreement that enabled it to market Access One's local exchange services in certain states before the merger was completed. In August 2000, Talk.com completed the merger with Access One. Through this merger, Talk.com acquired approximately 50,000 local exchange customers -- including a small residential customer base -- which enabled it to capitalize on the

growing opportunity to build a fully-integrated telecommunications network, offering both local and long distance services to small businesses and residential consumers.

The merger has enabled the Company to offer a variety of bundled local and long distance package offerings to its primarily residential subscribers at competitive, low cost rates. Recently, for example, the Company introduced a new plan that includes unlimited local and intraLATA calling, up to 1000 minutes of free long distance calling to other Talk America bundled customers, and 200 minutes of free state-to-state and interLATA long distance calling to non Talk America customers -- all for one flat fee. The Company also recently introduced a test plan to its existing customers in certain states outside of Florida that enables such customers to select a lower price plan through which customers pay for all intraLATA calls over 200 minutes for a lower monthly fee. Through low cost calling plans such as these, Talk America's customers may select the plan best-suited to their individualized calling needs.

C. NAME CHANGE TO TALK AMERICA

On April 9, 2001, Talk.com, Inc., the parent company of Talk.com Holding Corp., changed its name to Talk America Holdings, Inc. Subsequently on April 11, 2001, Talk.com Holding Corp. changed its name to Talk America Inc.¹ These name changes were conducted to effect an internal corporate restructuring that began last summer with the acquisition of Access One and to reflect the Company's goal to provide bundled telecommunications services to residential customers coast-to-coast.

As of this date, the Company has a total of approximately 270,000 local exchange customers in the following states: California, Florida, Georgia, Louisiana, Michigan, Mississippi, New York, North Carolina, Oklahoma, Pennsylvania, Tennessee, Texas and Virginia. Talk America has approximately 1.5 million long distance customers nationwide with a principal target market is that of residential customers.

II. DESCRIPTION OF PROBLEM AREAS IDENTIFIED BY TALK AMERICA AND THE IMPLEMENTATION OF SOLUTIONS TO ADDRESS THESE PROBLEMS

As the Florida Public Service Commission ("Commission") will see from this Analysis and from the Florida Complaint Analysis Chart Exhibits appended hereto, without question, the Company experienced a few substantial hiccups over the past year in its progression from its successful resale long distance telecommunications operations to an integrated, facilities-based local and long distance operation. The critical time period within which the bulk of the problems occurred was the period between May-November 2000. During this timeframe, the Company entered into its Services Agreement with Access One to market local exchange services, formally acquired Access One, and began to consolidate its local and long distance operations so that it could market, provision and bill for its facilities-based local exchange services via a UNE-P network.

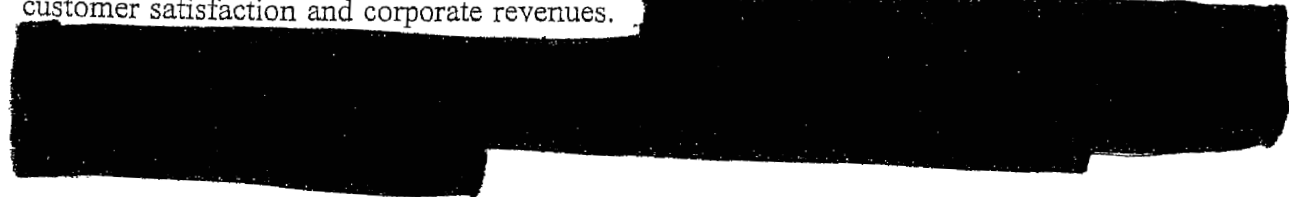
¹ The Commission was notified of this name change on May 4, 2001, and an order approving this name change is scheduled to be issued on June 14, 2001.

The rapid acceleration of the Company's entry into facilities based local exchange services unfortunately resulted in the occurrence of a variety of unexpected problems relating to four (4) primary areas: billing, issuance of promotional checks, provisioning and cancellation. In addition, the Company has found that approximately 20% of the complaints it has received involve customer claims of disputed authorizations for which Company has a valid authorization from the subscriber.²

As the Company began offering local exchange services to its customers on a facilities-basis, it found that it was not fully prepared to provide service to such a large customer base. As a result, its provisioning time frames were slower than expected, its billing systems were inadequate, and it encountered unanticipated difficulties in mirroring the ILEC local calling plans that it had intended to offer to its local exchange customers. Talk America also discovered that the UNE-P experience of Access One's management, while significant, did not transition easily into the residential market. Many of the provisioning problems experienced by the Company following its August 2000 acquisition of Access One were a function of the existence of an inadequate number of properly-trained personnel during its transition from a small, order-a-day company (Access One) to a much larger but more systematic company that processes up to orders per day (Talk America).

In short, the Company found itself unable to keep pace with the ordering, billing and provisioning of service to the residential local exchange customers who were ordering services from the Company. In an effort to curtail and correct these unexpected problems, since the Fall of 2000, the Company has implemented a number of new procedures and processes, which are described in detail below. The Company has spent millions to train and improve its customer services, expand and updated its provisioning and billing ("back office") systems and cultivate customer goodwill through refunds and credits to customers affected by billing, provisioning, cancellation and promotional check mismatch problems.

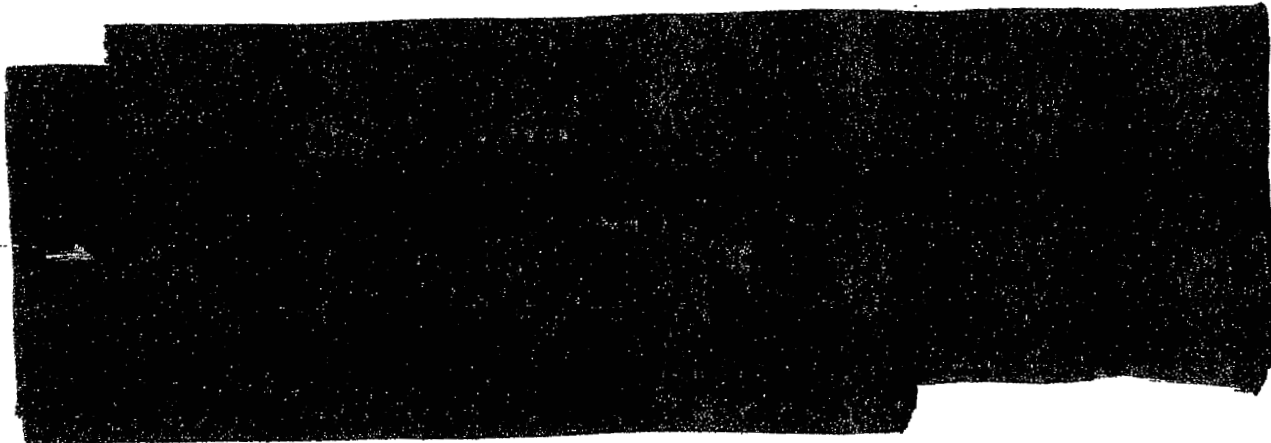
As the Charts demonstrate, these efforts clearly have been making a difference, both in customer satisfaction and corporate revenues.



As the Commission will see in *Exhibit C, Florida Complaint Analysis, Complaints by Date of Sale*, it is important to note that the bulk of the complaints that the Company has received from its customers in Florida stem from dates of sale that occurred within the May-November 2000 time period. As *Exhibit C* reveals, the dates on which customers have complained to the Commission (which are depicted in *Exhibit B, Complaints by Date Received*), generally are not at all related to the dates on which the Company actually sold or marketed service to the complainants. Accordingly, the significant numbers of complaints that the Commission now is receiving (and has been receiving over the past few months) are a result of sales made by the Company from approximately May-November 2000. As a result, what, at first glance, looks to be a growing problem for the Company, in actuality is the progression of a

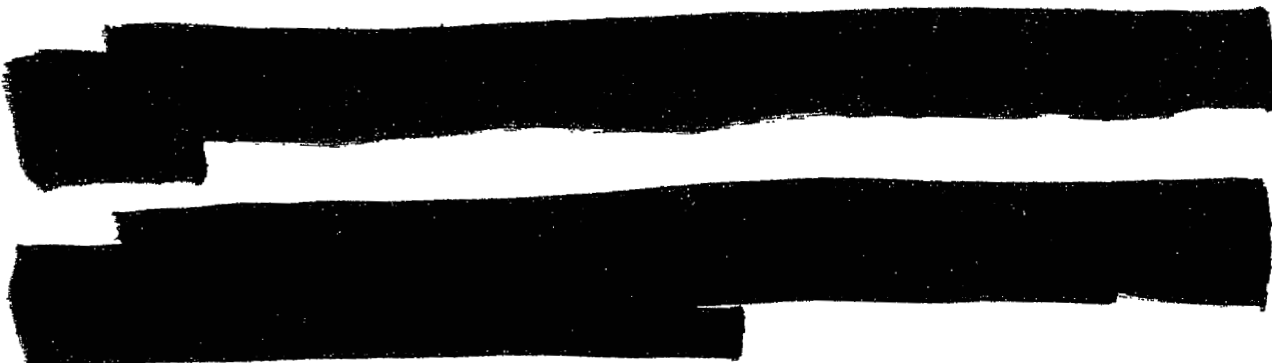
² See Exhibit A, Florida Complaint Analysis, Complaints by Type.

process in which customers complaints from this relevant time period continue to wash through the Commission's complaint system.



The specific problems that the Company encountered during the May-November 2000 time period are identified and explained in detail as follows, together with the solutions and procedures that the Company has undertaken to correct these problems and prevent any future occurrence.

A. BILLING



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3 [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. DISPUTED AUTHORIZATIONS

The Company employs a strict, zero-tolerance policy toward slamming, cramming, misrepresentation and any other conduct that violates any applicable law. All independent contractors (telemarketers and third party verification ("TPV") entities) have been notified of the zero-tolerance practice. All direct agents of the Company receive extensive training and monitoring in the Company's compliance procedures and have been separately notified of the zero-tolerance policy.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



C. PROMOTIONAL CHECK MISMATCHES

In the past year, prospective customers of Talk America have, at times, received promotional checks in which the phone number on the check does not match the name of the person who signed the check (or authorized the switch). In recognition of this problem, Talk America has implemented new procedures to improve the accuracy attending its issuance of promotional checks. These procedures are designed to discover mismatched names/phone numbers *prior to* the mailing of these checks to its prospective customers.



[REDACTED]

[REDACTED]

D. PROVISIONING

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]


E. CANCELLATION

[REDACTED]

[REDACTED]

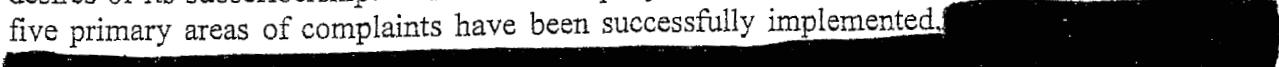
[REDACTED]

[REDACTED]



III. CONCLUSION

As this Analysis demonstrates, Talk America is committed to resolving, as much as is within its control, the operational problems that have occurred as a result of its entry into the provision of facilities-based local exchange service. As the Complaint Analysis Charts illustrates, the vast majority of the complaints filed as a result of these problems stem from dates of sale that occurred prior to November 2000. Where the Company has been able to rectify its problems, it has used any and all means necessary, without regard to expense or hardship, to do so, in order to comply fully with all state and federal regulations and to satisfy the needs and desires of its subscribership. While the Company believes that most of the fixes relating to the five primary areas of complaints have been successfully implemented.



Notwithstanding this fact, the Company is fully committed to undertake any means feasible to expeditiously correct the problems identified herein, or any that occur in the future, and is happy to entertain any suggestions that the Commission may have in this regard.

LAW OFFICES
MESSER, CAPARELLO & SELF
A PROFESSIONAL ASSOCIATION

215 SOUTH MONROE STREET, SUITE 701
POST OFFICE BOX 1876
TALLAHASSEE, FLORIDA 32302-1876
TELEPHONE: (850) 222-0720
TELECOPIER: (850) 224-4359
INTERNET: www.lawfla.com

September 6, 2001

BY HAND DELIVERY

Charles J. Beck, Deputy Public Counsel
Office of the Public Counsel
State of Florida
c/o the Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, Florida 32399-1400

Re: Docket No. 010409-TP - Office of Public Counsel Discovery Requests

Dear Mr. Beck:

On August 7, 2001, Talk America, Inc. (f/k/a "Talk.com", hereinafter "Talk America" or "the Company") provided the State of Florida's Office of the Public Counsel ("Public Counsel") with documents responsive to Question #3 of the Public Counsel's First Set of Requests for Production of Documents to Talk.com and the Other Phone Company. The documents produced included a Privilege Log ("August 7, 2001 Privilege Log") identifying fourteen (14) documents the Company considers privileged and, thus, subject to Talk America's right to assert an attorney-client confidentiality privilege.

Subsequent to that filing, you expressed some doubt as to whether all the documents identified in the August 7, 2001 Privilege Log qualify for the attorney-client privilege. In particular, you identified those listing the recipients as "multiple corporate employees" (Documents 4, 5, 7, 9, 10, 12, and 13 on the log, or collectively, "Meeting Minutes"). Talk America maintains its claim of privilege for the "Meeting Minutes" documents for the following reasons:

First, the Meeting Minutes reflect a record of conversations between Talk America employees and attorneys for the Company. The communications between the employees and the Company's attorneys would not have occurred, but for the presence of the attorneys.

ATTACHMENT B

Second, the attorneys, including Talk America's General Counsel and Executive Vice-President, the Company's Associate General Counsel for Regulatory Affairs, and a Corporate Counsel, attended and participated in the meetings for the primary purpose of providing specific legal advice regarding the issues raised in the meetings. Notably, the discussions during these meetings were not limited to the specific analysis, evaluation, or comments regarding the extent or causes of "slamming" customers in Florida, but included an analysis of multiple issues for which the corporate employees requested and received legal advice and counsel. Therefore, although every aspect of the meeting did not concern slamming, the collective subject matter of the meeting was considered significant enough to warrant oversight and analysis by attorneys from the Company's legal department.

Third, in response to your query, Mr. Benedict (Benjamin) P. Serzo, the author of the Meeting Minutes documents, is not an attorney. Rather, he is an employee of the Company who is responsible for collecting and organizing requests for legal advice generated by other corporate employees. His official title is Director of Operations. Given that the purpose of the meetings was to obtain advice from counsel regarding different legal issues as they arose, the corporate employees attending the meeting, including Mr. Serzo, initiated their discussions with counsel at the specific request of, and with knowledge of, their corporate superiors. Thus, the descriptions contained in the documents are requests by corporate employees for legal advice regarding job-related activities.

Fourth, Mr. Serzo, in his role as a recorder of the requests for legal advice and the substantive conversations between the Company's employees and its attorneys, created records which reflect the notes of a client seeking advice from his or her counsel. These documents should not be subject to disclosure in light of the stated privilege. Moreover, the Meeting Minutes were only distributed to a limited number of persons, namely the attendees of the meetings and the Company's attorneys. Attendance at the meeting is limited and restricted and access to the meeting minutes is similarly controlled and restricted.

Finally, it is important to note that the presence of Talk America's attorneys during these meetings is instructive regarding the seriousness with which the Company considers its legal obligations and its desire to ensure that its employees comply with all regulatory requirements. Talk America's attorneys attended and participated in these discussions for the purpose of providing legal advice in light of multiple agency investigations active at the time of the meetings.

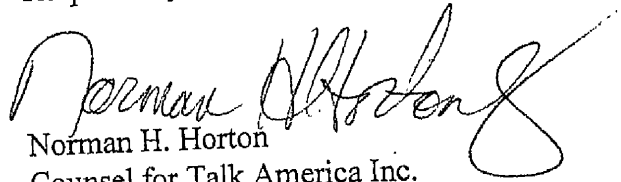
We hope this explanation is helpful in better understanding Talk America's claim of privilege regarding the Meeting Minutes. As a related matter, we have also expanded our research of documents in response to your request that we make certain that there were no other non-privileged documents which would be responsive to your initial request. Although we performed an initial

Charles J. Beck, Deputy Public Counsel
September 6, 2001
Page 3

search and analysis and provided a response, we initiated a re-inspection and expansion of the initial research to insure that all relevant documents were identified. Should our search produce additional documents, Talk America will supplement its response as necessary.

Please feel free to contact me if you have any questions regarding any of the issues in this correspondence or if may be of further assistance in this matter.

Respectfully submitted,


Norman H. Horton
Counsel for Talk America Inc.

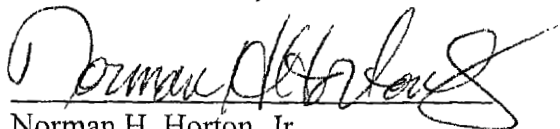
cc: Steven A. Augustino, Kelley Drye & Warren LLP
Francie McComb, Associate General Counsel, Talk America Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of Talk America, Inc.'s Response to Citizen's First Motion to Compel and Request for *In Camera* Inspection of Documents in Docket No. 010409-TP have been served upon the following parties by Hand Delivery (*) and/or U.S. Mail this 26th day of September, 2001.

Mary Ann Helton, Esq.*
Division of Legal Services, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Charles Beck, Esq.*
Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400


Norman H. Horton, Jr.