

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Citizens of State of Florida for investigation of Talk America Inc. and its affiliate, The Other Phone Company, Inc. d/b/a Access One Communications, for willful violation of Rule 25-4.118, F.A.C.

DOCKET NO. 010409-TP

In re: Investigation of possible violation of Commission Rules 25-4.118 and 25-24.110, F.A.C., or Chapter 364, F.S., by The Other Phone Company, Inc. d/b/a Access One Communications, holder of ALEC Certificate No. 4099, and Talk America Inc., holder of ALEC Certificate No. 4692.

DOCKET NO. 010564-TX
ORDER NO. PSC-02-1148-PAA-TP
ISSUED: August 22, 2002

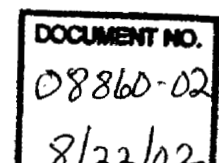
The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER ACCEPTING SETTLEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.



BACKGROUND

Talk America¹ obtained Florida Public Service Commission Interexchange Company (IXC) telecommunications Certificate No. 2985 on July 29, 1992, and Alternative Local Exchange Company (ALEC) Certificate No. 4692 on August 29, 1996. Talk America obtained IXC Certificate No. 4100 and ALEC Certificate No. 4099 through the transfer of ownership and control from The Other Phone Company, Inc. d/b/a Access One Communications on August 3, 2000.

On April 6, 2001, the Office of the Public Counsel (OPC) filed a petition on behalf of the Citizens of the State of Florida for investigation of Talk America (IXC Certificate Nos. 2985 and 4100) for willful violation of Rule 25-4.118, Florida Administrative Code. Docket No. 010409-TP was opened in conjunction with the OPC's petition. Subsequently, on April 20, 2001, our staff opened Docket No. 010564-TX to investigate possible violations of Rule 25-4.118, Florida Administrative Code, and Chapter 364, Florida Statutes, by Talk America (ALEC Certificate Nos. 4692 and 4099).

On June 21, 2001, we issued Order No. PSC-01-1361-PCO-TX, in this docket, granting a motion filed by Talk America to consolidate Docket Nos. 010564-TX and 010409-TP. Hence, all the apparent violations against Talk America's four certificated entities were combined into one proceeding.

By Order No. PSC-01-2107-SC-TP, issued October 23, 2001 (Show Cause Order), we ordered Talk America to show cause in writing within 21 days why it should not be fined \$10,000 per apparent violation, totaling \$6,570,000, for 522 apparent violations of Rule 25-4.118, Florida Administrative Code, Toll, Local Toll, or Toll Provider Selection, 105 apparent violations of Section 364.604(2), Florida Statutes, Billing Practices, and 30 apparent violations of Rule 25-22.032(5)(a), Florida Administrative Code, Customer

¹In the interest of simplification, Talk.com Holding Corp. d/b/a Network Services d/b/a The Phone Company (now known as Talk America, Inc.) and its affiliate, The Other Phone Company d/b/a Access One Communications, will be collectively referred to as "Talk America" throughout this Order.

Complaints. On November 6, 2001, Talk America filed a request for a hearing. By Order No. PSC-02-0095-PCO-TP, issued January 16, 2002, we granted Talk America's request for an extension of time to file a response to the Show Cause Order.

On March 19, 2002, Talk America filed its initial response and renewed its request for a hearing. Talk America also filed its Motion for Summary Final Order and Motion to Dismiss. On June 11, 2002, Talk America filed its settlement offer, which is attached to this Order as Attachment A, to resolve the 657 apparent violations cited in the Show Cause Order.

Talk America's intrastate revenue for its four certificated entities as reported on its 2001 Regulatory Assessment Fee forms for the period January 1, 2001, through December 31, 2001, totaled \$8,295,634.39. We are vested with jurisdiction over this matter pursuant to Sections 364.01, 364.19, 364.183, 364.285, 364.337, 364.603, and 364.604, Florida Statutes.

SETTLEMENT

In its settlement proposal, dated June 11, 2002, Talk America offers to pay \$240,000, in 36 equal monthly installments, to the State of Florida General Revenue Fund to resolve the 657 apparent violations cited in the Show Cause Order.

In the Show Cause Order, 414 of the 657 complaints that we found to be apparent violations were originally closed by the Division of Consumer Affairs (CAF) as apparent non-violations. Talk America asserts that those 414 complaints should not be eligible for consideration as apparent violations by us because CAF had previously closed the complaints as apparent non-rule violations. We disagree. Only we have the authority to make binding determinations regarding whether Talk America has or has not violated our rules or Florida Statutes. Further, we find that if this matter were to proceed to hearing, we would not be

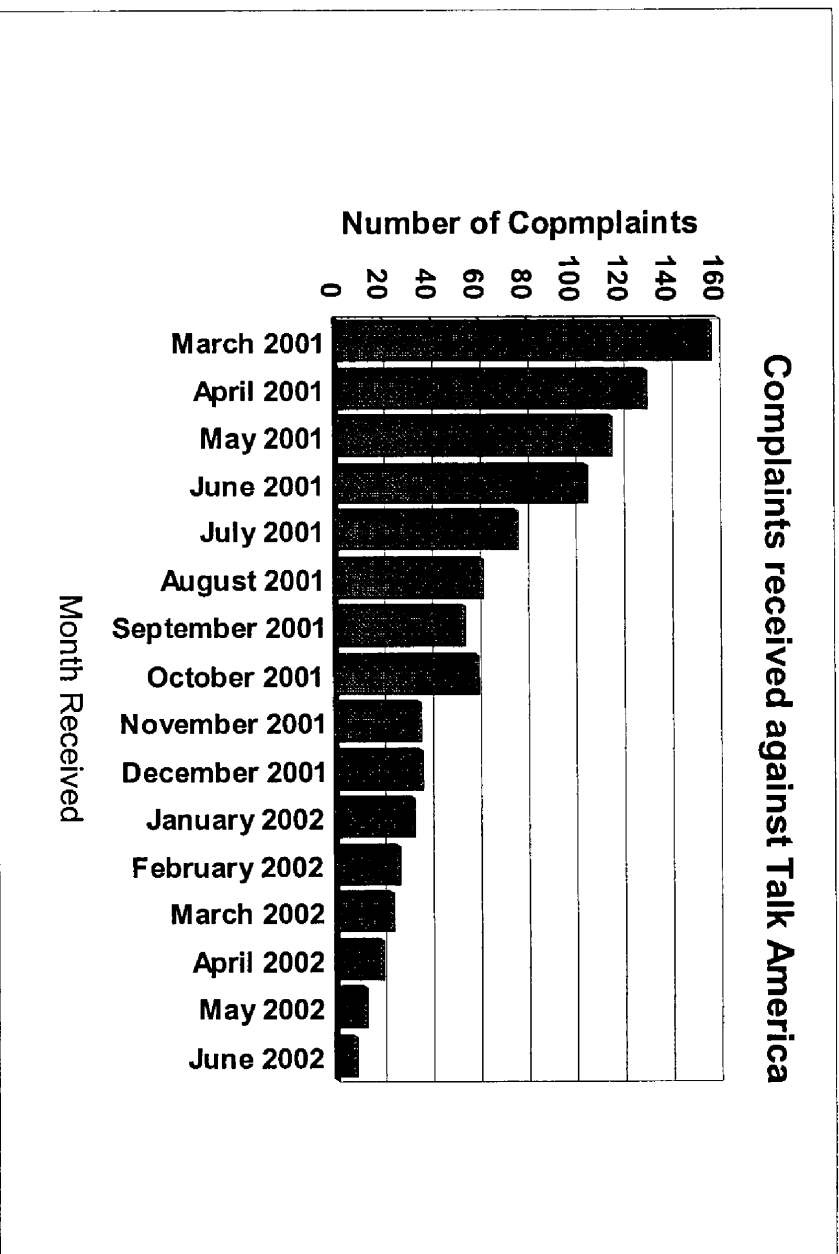
precluded from exercising our adjudicative authority over apparent violations arising out of consumer complaints merely because those customer complaints were initially closed as non-violations by our CAF staff.

Nevertheless, we find that the payment amount of \$240,000 proposed by Talk America is, to a considerable extent, consistent with previous settlement offers accepted by us for apparent slamming violations if, for the sole purpose of settlement, the 414 apparent violations initially closed as non-violations and included in the Show Cause Order, are not counted. This would leave a balance of 243 apparent violations and the settlement amount would equate to \$988 per apparent violation - an amount more consistent with previous settlement offers.

Given the totality of circumstances in this unique case, in our discretion, we find it appropriate to accept Talk America's settlement offer based on its general consistency with previous settlement offers for similar apparent violations. Our decision in this unique case does not preclude us from exercising our adjudicative authority over other consumer complaints closed as apparent non-violations in other dockets or proceedings.

In addition, it appears that Talk America has taken the necessary actions and corrected the problems causing the large number of complaints which prompted our staff's investigation and the OPC's petition. The number of complaints received by us against Talk America has decreased significantly since its peak in March 2001 as illustrated in Chart 1. Moreover, all of the complaints filed against Talk America have been resolved.

Chart 1



However, we are placing Talk America on notice that our staff will continue to monitor the company for strict compliance with our rules and Florida Statutes. In the event that complaints increase against Talk America, our staff will not hesitate to initiate an investigation into the company's managerial and operational practices.

Accordingly, we accept Talk America's settlement offer to make a voluntary payment of \$240,000 to the State of Florida General Revenue Fund. The payments shall be made in 36 equal monthly intervals in the amount of \$6,667.67 each. The first payment shall

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be received within 30 days from the issuance of the Consummating Order and shall identify the docket number and company name. Each subsequent payment shall be due within 30-day intervals following the first payment and shall also identify the docket number and company name. We shall forward the payments to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. In addition, we find that all pending motions are rendered moot.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Talk America, Inc.'s settlement offer filed June 11, 2002, is hereby accepted and approved. It is further

ORDERED that Talk America, Inc. shall make a voluntary payment of \$240,000 to the State of Florida General Revenue Fund and the payments shall be made in 36 equal monthly intervals in the amount of \$6,667.67 each. It is further

ORDERED that the first payment shall be received within 30 days from the issuance of the Consummating Order in this docket and shall identify the docket number and company name. Each subsequent payment shall be due within 30-day intervals following the first payment and shall also identify the docket number and company name. It is further

ORDERED that the payments shall 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 further

ORDERED that all pending motions are rendered moot. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee,

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Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event that a person whose substantial interests are affected by the PAA order files a protest within 21 days of the issuance of this Order, this docket shall remain open pending resolution of the protest. It is further

ORDERED that if no protest is received and this Order becomes final, both dockets shall remain open until Talk America, Inc. remits all 36 payments of \$6,666.67 each. Upon remittance of all 36 payments, totaling \$240,000, both dockets shall then be closed administratively.

By ORDER of the Florida Public Service Commission this 22nd Day of August, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

PAC/LHD

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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 12, 2002.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.