

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 4, 2010

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Kennedy) *RK*
Office of the General Counsel (Tan) *TNA*

RE: Docket No. 060485-TI – Compliance investigation of Toll Free Connect, Inc., Access One Communications, Inc., and Enhanced Billing Services, Incorporated for apparent violations of Chapter 364, F.S., and Chapter 25-24, F.A.C.

AGENDA: 03/16/10 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCP\WP\060485.RCM.DOC

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Case Background

Enhanced Billing Services, Incorporated (Enhanced Billing), Access One Communications, Inc. (Access One), and Toll Free Connect, Inc. (Toll Free), registered with the Commission as intrastate interexchange telecommunications companies (IXCs) on July 23, 2004, August 18, 2004, and August 25, 2005, respectively. They were assigned IXC Registration Nos. TJ938, TJ942, and TK018, respectively. Collectively, the three companies are referred to as “Group” in this recommendation where appropriate to simplify the discussion.

The purpose of this recommendation is to address the disposition of the Group’s IXC registrations, memorialize a permanent restraint placed upon two individuals by the United

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States District Court, Southern District of Florida (Court), and to seek permission to write-off unpaid Regulatory Assessment Fees.

Each company has failed to pay regulatory assessment fees, along with statutory penalties and interest for the years 2005 through 2009. The regulatory assessment fee each company has failed to pay is \$2,200, not including statutory penalties and interest. Interest and penalties will be calculated at the time a write-off request is submitted to the Division of Financial Services.

In addition to an active intrastate interexchange company registration with the Commission, Access One once held a competitive local exchange telecommunications company certificate. By Order No. PSC-05-1157-PAA-TX¹, issued November 21, 2005, Access One's competitive local exchange telecommunications Certificate No. 8530 was involuntarily cancelled, effective December 31, 2005, by the Commission for the company's failure to pay the 2004 and 2005 regulatory assessment fees.

Staff initiated an investigation of Access One based on eight consumer complaints filed with the Commission in 2005. The consumers claimed that they were charged for collect calls that they had not received. Staff's investigation expanded when it was determined that Access One and Toll Free shared the same corporate officer, Ms. Erika Riaboukha. Staff also found that through applications filed with the Commission that Ms. Yaret Garcia, an officer of Enhanced Billing, was associated with Access One. Ms. Yaret Garcia was also listed as an officer in a company named Nationwide Connections, Inc.

Upon further search of records filed with the Secretary of State, Division of Corporations, and other records obtained from the Internet, staff determined that the officers of the Group had common ties with officers of other companies. For example, Ms. Erika Riaboukha was listed as an officer of Lazy River Holdings, LLC, China Cat Sunflower, LLC, Turn On Your Lovelight, LLC, and The Other One, LLC. Ms. Mary Lou Farr was also listed as an officer for these same companies. In turn, Ms. Mary Lou Farr and Mr. Willoughby Farr were listed as an officer in common to a company named Spoonful.net, Inc. These companies were not registered with or certificated by the Commission, and it does not appear that they were providing telecommunications services in Florida.

The significance of the relationships of the persons and companies named above became apparent when staff conducted searches in the Commission's Consumer Activity Tracking System. Staff found 13 cramming complaints that consumers filed in 2004 and 2005 against Nationwide Connections, Inc. for billing of collect calls that consumers denied receiving. Nationwide Connections, Inc. was not registered with the Commission as a telecommunications services provider in Florida. Staff found 16 consumer complaints of cramming filed in 2002 and 2003 against Spoonful.net, Inc. The charges appear to be related to various types of Internet services, e.g., search engine or web page design. Access One, Nationwide Connections, Inc. and Spoonful.net, Inc. used third-party billing agents to have their charges placed on consumers' telephone bills.

¹ Docket No. 050640-TX, In Re: Compliance investigation of Access One Communications, Inc., CLEC Certificate No. 8530, for apparent violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies.

Staff surmised that the Group and other unregulated companies, with which the officers were associated, were apparently in the business of intentionally placing unauthorized charges on consumers' phone bill. This is a practice commonly referred to as cramming. Thus, on June 29, 2006, staff opened this docket to address the companies' apparent violations of Chapter 364, Florida Statutes (F.S.), and Chapter 25-4, Florida Administrative Code (F.A.C.). Staff planned to file a recommendation for the Commission's consideration. In July 2006 and before a recommendation was filed, staff received a call from an attorney at the FTC. Staff was advised to review an order issued by the United States District Court, Southern District of Florida, Case No. 06-80180-CIV-RYSKAMP.

United States District Court - Case No. 06-80180-CIV-RYSKAMP

On February 26, 2006, the Federal Trade Commission (FTC), filed a Complaint for Injunctive and Other Equitable Relief and applied ex parte for a Temporary Restraining Order and Other Equitable Relief with the United States District Court, Southern District of Florida, Case No. 06-80180-CIV-RYSKAMP. The Defendants were identified as Nationwide Connections, Inc., Access One Communications, Inc., Network One Services, Inc., Willoughby Farr, Mary Lou Farr, Yaret Garcia, Erika Riaboukha, and Qaadir Kaid.² On the same day, the Court issued a Temporary Restraining Order, including an asset freeze, and appointed a temporary receiver.

The Court issued a Preliminary Injunction Order on March 8, 2006. In the Preliminary Injunction Order, the Court precluded, except by leave of the Court, any party from commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding against a Receivership Defendant, except that such actions may be filed to toll any applicable statute of limitations. Because there are no statutes of limitation applicable to the Commission's business in this case, staff proceeded no further in this docket.

Mr. Willoughby Farr and Ms. Mary Lou Farr have been permanently barred from conducting any telecommunications business pursuant to Court orders.³ Willoughby Farr and Mary Lou Farr are permanently restrained from the following:

- A. Billing or submitting any charge for billing on a Line Subscriber's telephone bill;
- B. Receiving any remuneration or other consideration of any kind whatsoever from any business entity engaged in or assisting in billing, or submitting any charge for billing, on a Line Subscriber's telephone bill;
- C. Holding any ownership interest, share, or stock in any business entity engaged in or assisting in billing, or submitting any charge for billing, on a Line Subscriber's telephone bill; or

² Several third-party billing agents were also identified as defendants and third party plaintiffs in this case, but have no bearing in this recommendation.

³ Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress as to Defendant Willoughby Farr, and Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress as to Defendant Mary Lou Farr, United States District Court, Southern District of Florida, Case No. 06-80180-CIV-RYSKAMP/VITUNAC.

- D. Serving as an employee, officer, director, or trustee, general manager of, or consultant or advisor to any business entity engaged in or assisting in billing, or submitting any charge for billing, on a Line Subscriber's telephone bill.

This Commission is vested with jurisdiction over these matters pursuant to Sections 364.02, 364.04, 364.285, 364.336, and 364.604, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission, on its own motion and with prejudice, cancel Enhanced Billing Services, Incorporated, Access One Communications, Inc., and Toll Free Connect, Inc.'s intrastate interexchange telecommunications tariffs and remove each company from the register with an effective date of December 31, 2009, and permanently deny any future application for a certificate of public convenience and necessity or registration to operate as a regulated telecommunications provider in Florida submitted by Mr. Willoughby Farr and Ms. Mary Lou Farr, for the companies and the officers apparent violation of Section 364.604, F.S., Billing Practices, Section 364.336, F.S., Regulatory Assessment Fees, and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees, Telecommunications Companies?

Recommendation: Yes. (Kennedy, Tan)

Staff Analysis: Pursuant to Section 364.336, F.S., certificate holders must pay a minimum annual Regulatory Assessment Fee if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due.

Pursuant to Rule 25-4.0161(10), F.A.C., telecommunications companies that fail to pay the Regulatory Assessment Fee, including statutory late payment charges, within 15 days after receiving a delinquent notice, shall be automatically penalized \$500 for a first offense, \$1,000 for a second offense, and \$2,000 for a third offense. The penalty amounts include collection costs. If an entity fails to pay the Regulatory Assessment Fee in full, including any statutory late payment charges, along with the penalty amount, that entity's IXC tariff and registration shall be cancelled.

None of the companies of the Group paid regulatory assessment fees for the years 2005 through 2009. Because the Court precluded, except by leave of the Court, any party from commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding against a Receivership Defendant, staff did not initiate enforcement action. Even though the Group did not pay Regulatory Assessment Fees, staff believes it would serve no useful purpose to attempt to impose penalties on the Group at this juncture. Instead, staff believes that the Commission should, on its own motion, cancel the registrations of each company. Rule 25-24.474, F.A.C., Cancellation of a Registration, provides that the Commission can cancel a company's registration for:

- Violation of the terms and conditions under which the authority was originally granted;
- Violation of a Commission rule or order; or
- Violation of Florida Statutes.

Not only did the Group fail to pay Regulatory Assessment Fees, they have also caused unauthorized charges to be placed on consumers' telephone bills. Staff has identified at least 37 complaints within the Commission's Consumer Activity Tracking System whereby consumers were billed for services that were not provided. Staff notes that all consumers that filed complaints with the Commission were issued credits for the unauthorized charges by the local exchange company or the third-party billing agent. Staff does not know how many other consumers in Florida may have received charges originating from the Group or their associated companies.

The companies are no longer in business. In addition, the Florida Department of State, Division of Corporations filed administrative dissolutions on September 15, 2006, because of failure to file annual reports, pursuant to Section 67.1420, Florida Statutes, for Enhanced Billing Services, Incorporated and Toll Free Connect, Inc. An administrative dissolution was filed for Access One Communications, Inc., on September 16, 2005.

Staff believes that the Group's actions of placing unauthorized charges on consumers' telephone bills and the failure to pay Regulatory Assessment Fees are violations of Sections 364.604 and 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, in the sense intended by Section 364.285⁴, Florida Statutes.

Therefore, staff recommends that the Commission, on its own motion and with prejudice, should cancel Enhanced Billing Services, Incorporated, Access One Communications, Inc., and Toll Free Connect, Inc.'s intrastate interexchange telecommunications tariffs and remove each company from the register with an effective date of December 31, 2009, and permanently deny any future application for a certificate of public convenience and necessity or registration to operate as a regulated telecommunications provider in Florida submitted by Mr. Willoughby Farr and Ms. Mary Lou Farr, for the companies and the officers apparent violation of Section 364.604, F.S., Billing Practices, Section 364.336, F.S., Regulatory Assessment Fees, and Rule 25-4.0161, F.A.C., Regulatory Assessment Fees, Telecommunications Companies.

⁴ Pursuant to Section 364.285(1), Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation 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, Florida Statutes, or revoke any certificate issued by it for any such violation. Staff believes in this situation, there is no purpose in imposing penalties on this Group.

Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13) (b), Florida Statutes, any issues not in dispute should be deemed stipulated. If Enhanced Billing Services, Incorporated, Access One Communications, Inc., Toll Free Connect, Inc., Mr. Willoughby Farr, or Ms. Mary Lou Farr fails to timely file a protest and request a Section 120.57, Florida Statutes, hearing, the facts should be deemed admitted, the right to a hearing waived, and the cancellation of IXC Registration Nos. TJ938, TJ942, and TK018 should be final. The companies and persons should be required to immediately cease and desist providing intrastate interexchange telecommunications services in Florida. The Commission should order staff to submit a request to write-off the unpaid Regulatory Assessment Fees, and accrued statutory late payment charges to the Florida Department of Financial Services. This docket should be closed administratively upon submission of the request to write-off the Regulatory Assessment Fees and late payment charges to the Department of Financial Services. **(Tan)**

Staff Analysis: Staff recommends that the Commission take action as set forth in the above staff recommendation.