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February 9, 1999

Ms. Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, Florida 32399-0850

HAND DELIVERY

RECEIVED-FPSC  
99 FEB -9 PM 4:06  
RECORDS AND  
REPORTING

Re: Docket No. 981247-TI

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of American Nortel Communications, Inc. ("ANC") are the original and fifteen copies of ANC's Answer to Complaint.

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

Thank you for your assistance with this filing.

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Sincerely,

*Kenneth A. Hoffman*  
Kenneth A. Hoffman

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF 1
- CMU 1
- CTR \_\_\_\_\_
- EAG KAHrl
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- LEG cc: Parties of Record
- LIN \_\_\_\_\_
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- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

01722 FEB-99

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause )
proceedings against American )
Nortel Communications, Inc. for )
violation of Rule 25-4.118, )
F.A.C., Interexchange Carrier )
Selection. )

Docket No. 981247-TI

Filed: February 9, 1999

AMERICAN NORTEL COMMUNICATIONS, INC.'S
ANSWER TO COMPLAINT

American Nortel Communications, Inc. ("ANC"), by and through its undersigned counsel,
in answer to the complaint filed by the Office of Public Counsel, admits, denies, and alleges as
follows:

- 1. ANC admits the allegations of paragraph 1 of the complaint.
2. ANC admits the allegations of paragraph 2 of the complaint.
3. In response to the allegations of paragraph 3 of the complaint, ANC denies that it
willfully violated Rule 25-4.118, Florida Administrative Code, in connection with the change of the
primary interexchange carrier of Ms. Belen Denis, 521 East Citrus Street, Altamonte Springs,
Florida, telephone 407-339-0814. ANC's agents had received a Letter of Authorization ("LOA")
dated September 13, 1998, with an address in Altamonte Springs, Florida and a phone number which
appears to be 407-339-0819. A copy of the LOA is attached to this answer as Exhibit "A." It
appears that the last digit of the telephone number may have been mistakenly identified as "4" rather
than "9," and that Ms. Owens' primary interexchange carrier may have been changed without her
authorization as a consequence of a data entry error. ANC lacks sufficient information and belief
to admit or deny when Ms. Denis first discovered the unauthorized change of her presubscribed

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interexchange carrier, and on that basis denies those allegations. With respect to the allegations of paragraph 3 concerning the length of time in which Ms. Denis' presubscribed interexchange carrier was changed to ANC without her authorization, ANC alleges that it promptly acted to return Ms. Denis' interexchange telecommunications service to her presubscribed carrier and that she suffered no interruption in service nor any economic damage as a result of the unauthorized change. ANC denies that this matter adversely affected the substantial interests of the people of the State of Florida.

4. ANC admits the allegations of paragraph 4 of the complaint.

5. With respect to the allegations of paragraph 5 of the complaint concerning the penal terms of Section 364.285, Florida Statutes (1998), ANC denies that its conduct in this matter warrants the imposition of any penalty pursuant to the statute. ANC specifically denies that its conduct in this matter can be considered "willful," as that term is defined in Florida law: "... that the actor has intentionally done an act of unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow...." Metropolitan Dade County v. State Department of Environmental Protection, 714 So.2d 512, 516-517 (Fla. 3<sup>rd</sup> DCA 1998). ANC also denies that the maximum penal amount or any fine authorized may be imposed against ANC unless and until there is a determination by the Commission that ANC willfully violated Rule 25-4.118, F.A.C., under the requirements of the rule in effect at the time of the alleged offense. Finally, ANC denies that any penalty may be imposed by multiplying the number of days an unauthorized change in a customer's presubscribed interexchange carrier continues until correction of the unauthorized change is requested by the customer.

6. ANC denies the allegations of paragraph 6 of the complaint. With respect to the allegations of paragraph 6 concerning the Commission staff's recommendation that a show cause order be issued against ANC, no copy or other notice of that recommendation was provided to ANC at any time. ANC first received notice of the Commission's intent to issue the Order to Show Cause in this matter when that Order was served on November 23, 1998. With respect to the allegations of paragraph 6 that the unauthorized change in Ms. Denis' presubscribed interexchange carrier occurred after November 3, 1998 when ANC had knowledge of the Commission's intent to issue the Order to Show Cause, ANC alleges as previously stated that it had no knowledge before November 23, 1998 of the Commission's intent to issue the Order to Show Cause, and further alleges that its agents and independent contractors apparently changed Ms. Denis' primary interexchange carrier pursuant to an LOA dated September 13, 1998, a copy of which is attached as Exhibit "A" to this answer.

#### **AFFIRMATIVE DEFENSES**

1. Ms. Denis suffered no interruption in service or any economic damage as a result of the matters alleged in the complaint, nor have the substantial interests of the people of the State of Florida been adversely affected by the matters alleged in the complaint.

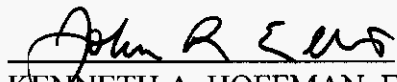
2. ANC resells interexchange telecommunications services, and relies on independent contractors to market its services, including the function of data entry of names, addresses and telephone numbers of new customers. ANC denies that it has authorized or ratified the conduct of its agents and independent contractors, in connection with the November, 1998 unauthorized change of Ms. Denis' presubscribed interexchange carrier, so as to subject ANC to potential liability pursuant to Rule 25-4.118, Florida Administrative Code or Section 364.285, Florida Statutes.

3. In August of 1998, the form of the LOA used by ANC's agents and independent contractors to market ANC's services was submitted to the Commission staff for approval, and was revised at that time to require the written entry of the age of the applicant in response to direction from the Commission staff. The form of the LOA attached as Exhibit "A" to this answer in fact complied with the requirements of Rule 25.4118, Florida Administrative Code, at all times relevant to this action, and cannot constitute a basis for an alleged willful violation of that rule.

4. As stated in ANC's February 1, 1999 amended response to the Commission's Order to Show Cause in this matter, in the event that these proceedings cannot be resolved by settlement, ANC requests that the matter be transferred to the Division of Administrative Hearings for assignment to an Administrative Law Judge to conduct a formal administrative hearing to resolve the disputed issues of fact and issues of law raised in the complaint.

Respectfully submitted this 9th day of February, 1999.

Respectfully submitted,



KENNETH A. HOFFMAN, ESQ.

JOHN R. ELLIS, ESQ.

Rutledge, Ecenia, Purnell & Hoffman, P.A.

P. O. Box 551

Tallahassee, FL 32302

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail or Hand Delivery(\*) this 9th day of February, 1999 to the following:

Clintina Watts, Esq.(\*)  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, FL 32399-0850

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

  
\_\_\_\_\_  
JOHN R. ELLIS

Nortel.ans

Brought  
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**Official LOA Form**  
Long Distance Application  
Please Print--Fill Out Completely

DATE (REQUIRED) 9/13/98 AGE (REQUIRED) 19  
NAME Luis ORENGO  
ADDRESS 520 CORTA E.  
CITY ALTO SPRING STATE FL. ZIP 32714  
HOME PHONE (REQUIRED) 407 339-0814  
SIGNATURE (REQUIRED) Luis ORENGO

I certify that I am at least 18 years of age and am the responsible person for the phone number listed above. I further understand that I may cancel this agreement at any time. I hereby authorize American Nortel Communications Inc., to act as my agent, and to convert the long distance service on my phone listed above from my current carrier to American Nortel Communications Inc. I understand that this LOA changes my carrier, and that I may designate only one carrier at a time for any one number. I understand that I will be billed through my local telephone company by American Nortel Communications Inc. I understand that my local phone company may access a charge for my conversion. If this occurs, American Nortel Communications Inc. will pay me back if I send a copy of my bill to them.

