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State of Florida



Public Service Commission

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RECORDS AND REPORTING

DATE: SEPTEMBER 14, 2000

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

FROM: DIVISION OF LEGAL SERVICES (BANKS) *FRB*
DIVISION OF COMPETITIVE SERVICES (BUYS/KENNEDY) *DBB* *PEK*

RE: DOCKET NO. 001066-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST AMERICA'S TELE-NETWORK CORP. FOR APPARENT VIOLATION OF RULE 25-4.118, F.A.C., LOCAL, LOCAL TOLL, AND TOLL PROVIDER SELECTION.

AGENDA: 09/26/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001066.RCM

CASE BACKGROUND

- February 3, 1996 - America's Tele-Network Corp. was granted Certificate Number 4377 to provide interexchange telecommunications services within the State of Florida.
- February 1, 2000 - America's Tele-Network Corp. reported gross operating revenues of \$341,490.42 on its Regulatory Assessment Fee Return for the period January 1, 1999 through December 31, 1999.
- March 7, 1996 - August 25, 2000 - The Commission's Division of Consumer Affairs closed 216 consumer complaints against America's Tele-Network Corp. for apparent unauthorized carrier change (slamming) infractions and an additional 108 consumer

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complaints, initially categorized as slamming, are still under investigation.

- August 7, 2000 - Staff opened this docket to initiate show cause action against America's Tele-Network Corp. for apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, and Toll Provider Selection.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order America's Tele-Network Corp. to show cause why it should not be fined \$2,160,000 or have certificate number 4377 canceled for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

RECOMMENDATION: Yes. The Commission should order America's Tele-Network Corp. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$2,160,000 or have certificate number 4377 canceled for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection. The company's response should contain specific allegations of fact and law. If America's Tele-Network Corp. fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and certificate number 4377 should be canceled. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(Buys/Kennedy)**

STAFF ANALYSIS: Between March 7, 1996 and August 25, 2000, the Commission's Division of Consumer Affairs (CAF) logged 324 complaint cases from consumers claiming they were slammed by America's Tele-Network Corp. As of August 25, 2000, staff has determined that 216 of those complaints were closed as apparent unauthorized changes of the primary interexchange carrier by America's Tele-Network Corp.

Staff recommends that America's Tele-Network Corp. be fined \$10,000 per violation (216), for a total of \$2,160,000. This recommendation is consistent with previous decisions in Docket Number 980950-TI, Initiation of show cause proceedings against Corporate Services Telecom, Inc. for violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, and Docket Number 980897-TI, Initiation of show cause proceedings against Least Cost Routing, Inc. d/b/a Long Distance Charges for violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection.

The current version of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection, became effective on December 28, 1998. Rule subsections that became effective on June 28, 1999 are summarized below:

- 25-4.118(2)(b)1. and 2. - Information that must be obtained for identity verification when the company receives a customer-initiated call.
- 25-4.118(2)(c)2. - Third party verification must be captured in an audio recording.
- 25-4.118(12) - If the company has a separate toll-free number for complaints regarding unauthorized carrier changes, new customers must be notified with their initial information package or their first bill.

Pertinent excerpts from the current rule are included as Attachment A, pages 6-7, and the applicable portions of the previous version of the rule are included as Attachment B, pages 8-9.

Ninety-six of the 216 apparent slamming violations occurred when the previous rule was in effect and were evaluated with respect to that rule. The other 120 violations were evaluated with respect to the current rule. The majority of all 216 violations, under both versions of the rule, are for the failure of the company to provide the required documentation to prove that the interexchange carrier change was authorized. Under both versions of Rule 25-4.118, Florida Administrative Code, the company is required to have authorization to change the customer's service, and the company must maintain the authorization, either a Letter of Agency (LOA), or Third Party Verification (TPV), for a period of one year. In many cases, America's Tele-Network Corp. could not produce the LOA or TPV tape. The TPV tapes that were received by the Commission's staff either were not discernible, or did not contain the proper information required by Rule 25-4.118 (2)(C),

Florida Administrative Code, for verification and/or authorization.

At least 61 customers reported never being contacted by America's Tele-Network Corp. and discovered they had been slammed only when they reviewed their telephone bills. America's Tele-Network Corp. could not produce a Letter of Agency or a Third Party Verification tape to confirm any contact with the 61 customers. Furthermore, twelve of the customers reported that a telemarketer misled them into believing they were talking to an AT&T representative about AT&T services.

By Section 364.285, 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 offense, 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. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Staff believes that America's Tele-Network Corp.'s conduct in executing unauthorized carrier changes in apparent violation of Commission Rule 25-4.118, Florida Administrative Code, has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as America's Tele-Network Corp.'s conduct at issue here, would meet the standard for a "willful violation."

As stated above, there are 216 (120 under the current rules) apparent slamming violations against America's Tele-Network Corp. Although this is the first show cause docket opened against America's Tele-Network Corp., staff believes that America's Tele-Network Corp. has displayed a pattern of willful disregard for the Commission's rules and Florida's public interest. Therefore, staff recommends that the Commission order America's Tele-Network Corp. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$2,160,000 or have certificate number 4377 canceled for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll

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Provider Selection. The company's response should contain specific allegations of fact and law. If America's Tele-Network Corp. fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and certificate number 4377 should be canceled. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 1 is approved, this docket should remain open pending the outcome of the show cause proceedings. If America's Tele-Network Corp. timely responds to the Order to Show Cause, this docket should remain open pending resolution of the show cause proceedings.

If America's Tele-Network Corp. fails to respond to the Order to Show Cause within the 21-day show cause response period and the fine is not received within ten business days after the expiration of the show cause response period, certificate number 4377 should be canceled and this docket may be closed administratively. If America's Tele-Network Corp. pays the fine recommended in Issue 1, this docket should be closed. **(Banks)**

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, this docket should remain open pending the outcome of the show cause proceedings. If America's Tele-Network Corp. timely responds to the Order to Show Cause, this docket should remain open pending resolution of the show cause proceedings.

If America's Tele-Network Corp. fails to respond to the Order to Show Cause within the 21-day show cause response period and the fine is not received within ten business days after the expiration of the show cause response period, certificate number 4377 should be canceled and this docket may be closed administratively. If America's Tele-Network Corp. pays the fine recommended in Issue 1, this docket should be closed.

**Excerpts from Rule 25-4.118
Florida Administrative Code
Effective December 28, 1998**

Rule 25-4.118(2), Florida Administrative Code, states in part:

(2) A LEC shall accept a change request from a certificated LP or IXC acting on behalf of the customer. A certificated LP or IXC shall submit a change request only if it has first certified to the LEC that at least one of the following actions has occurred:

(a) The provider has a letter of agency (LOA), as described in (3), from the customer requesting the change;

(b) The provider has received a customer-initiated call, and beginning six months after the effective date of this rule has obtained the following:

1. The information set forth in (3)(a)1. through 5.; and
2. Verification data including at least one of the following:

- a. The customer's date of birth;
- b. The last four digits of the customer's social security number; or
- c. The customer's mother's maiden name.

A firm that is independent and unaffiliated with the provider claiming the subscriber has verified the customer's requested change by obtaining the following:

1. The customer's consent to record the requested change or the customer has been notified that the call will be recorded; and
2. Beginning six months after the effective date of this rule an audio recording of the information stated in subsection (3)(a)1. through 5.

Rule 25-4.118 (3)(a)1. through 6., Florida Administrative Code, states:

(3)(a) The LOA submitted to the company requesting a provider change shall include the following information (each shall be separately stated):

1. Customer's billing name, address, and each telephone number to be changed;
2. Statement clearly identifying the certificated name of the provider and the service to which the customer wishes to subscribe, whether or not it uses the facilities of another company;
3. Statement that the person requesting the change is

authorized to request the change;

4. Statement that the customer's change request will apply only to the number on the request and there must only be one presubscribed local, one presubscribed local toll, and one presubscribed toll provider for each number;

5. Statement that the LEC may charge a fee for each provider change;

6. Customer's signature and a statement that the customer's signature or endorsement on the document will result in a change of the customer's provider.

Rule 25-4.118(5) and (6), Florida Administrative Code, states:

(5) A prospective provider must have received the signed LOA before initiating the change.

(6) Information obtained under (2)(a) through (d) shall be maintained by the provider for a period of one year.

Rule 25-4.118
Florida Administrative Code
Version in Effect Prior to December 28, 1998

25-4.118 Interexchange Carrier Selection.

(1) The primary interexchange company (PIC) of a customer shall not be changed without the customer's authorization. A local exchange company (LEC) shall accept PIC change requests by telephone call or letter directly from its customers.

(2) A LEC shall also accept PIC change requests from a certificated interexchange company (IXC) acting on behalf of the customer. A certified IXC that will be billing customers in its name may submit a PIC change request, other than a customer-initiated PIC change, directly or through another IXC, to a LEC only if it has certified to the LEC that at least one of the following actions has occurred prior to the PIC change request:

(a) the IXC has on hand a ballot or letter from the customer requesting such change;

(b) the customer initiates a call to an automated 800 number and through a sequence of prompts, confirms the customer's requested change; or

(c) the customer's requested change is verified through a qualified, independent firm which is unaffiliated with any IXC; or

(d) the IXC has received a request and has responded within three days by mailing of an information package that includes a prepaid, returnable postcard and an additional 14 days have past before the IXC submits the PIC change to the LEC. The information package should contain any information required by Rule 25-4.118(3).

(3)(a) The ballot or letter submitted to the interexchange company requesting a PIC change shall include, but not be limited to, the following information (each shall be separately stated):

1. Customer's name, phone/account number and address
2. Company and the service to which the customer wishes to subscribe

3. Statement that the person requesting the change is authorized to request the PIC change; and

4. Customer signature.

(b) Every written document by means of which a customer can request a PIC change shall clearly identify the certificated telecommunications company to which the service is being changed, whether or not that company uses the facilities of another carrier. The page of the document containing the customer's

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ATTACHMENT B

signature shall contain a statement that the customer's signature or endorsement on the document will result in a change of the customer's long distance provider and explain that only one long distance service provider may be designated for the telephone number listed; that the customer's selection will apply only to that number, and that the customer's local exchange company may charge a fee to switch service providers. Such statement shall be clearly legible and printed in type at least as large as any other text on the page. If any such document is not used solely for the purpose of requesting a PIC change, then the document as a whole must not be misleading or deceptive. For purposes of this rule, the terms "misleading or deceptive" mean that, because of the style, format or content of the document, it would not be readily apparent to the person signing the document that the purpose of the signature was to authorize a PIC change, or it would be unclear to the customer who the new long distance service provider would be; that the customer's selection would apply only to the number listed and there could only be one provider for that number; or that the customer's local exchange company might charge a fee to switch service providers. If any part of the document is written in a language other than English, then the document must contain all relevant information in the same language.

(c) If a PIC change request results from either a customer initiated call or a request verified by an independent third party, the information set forth in (3)(a)1. - 3. above shall be obtained from the customer.

(d) Ballots or letters will be maintained by the IXC for a period of one year.

(4) Customer requests for other services, such as travel card service, do not constitute a change in PIC.