

98 JUL -9 AM 10: 29



Public Service Commission RECORDS AND REPORTING
 CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
 TALLAHASSEE, FLORIDA 32399-0850

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

DATE: JULY 9, 1998

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

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *CP MCB*
 DIVISION OF CONSUMER AFFAIRS (DURBIN) *CP MCB*
 DIVISION OF COMMUNICATIONS (BIEGALSKI) *UB TW*

RE: DOCKET NO. 971493-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST ALL AMERICAN TELEPHONE, INC. FOR VIOLATION OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER SELECTION.

AGENDA: 07/21/98 - REGULAR AGENDA - ISSUE 1 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\971493.RCM

CASE BACKGROUND

All American Telephone, Inc. (All American), certificate number 4790, is a provider of interexchange telecommunications service and was certificated on February 18, 1997. All American has reported gross operating revenues of \$6,161,002.94 in its Regulatory Assessment Fee Return for the period January 1, 1997, through December 31, 1997. As a provider of interexchange telecommunications service in Florida, All American is subject to the rules and regulations of this Commission.

Thereafter, from April 29, 1997, until January 20, 1998, the Commission's Division of Consumer Affairs has closed 37 complaints against All American as unauthorized carrier change (slamming) infractions in apparent violation of Rule 25-4.118, Florida Administrative Code. Other complaints have been received by the Division of Consumer Affairs and are pending a response from All American.

DOCUMENT NUMBER-DATE

07217 JUL -98

FPSC-RECORDS/REPORTING

On February 10, 1998, the Commission issued Order No. PSC-98-0268-FOF-TI, requiring All American to show cause why it should not have certificate number 4790 canceled or be fined \$370,000 for 37 apparent violations of Rule 25-4.118, Florida Administrative Code. In response to this order, All American filed an offer of settlement on June 19, 1998. (Attachment A, Pages 5-6)

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by All American Telephone, Inc. to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection?

RECOMMENDATION: No. The Commission should reject the settlement offer proposed by All American. (Biegalski)

STAFF ANALYSIS: On February 23, 1998, and again on March 3, 1998, All American met with staff and addressed its concerns about the apparent violations. On June 19, 1998, All American submitted its offer to settle. In its settlement offer All American agreed to do the following:

- All American will immediately discontinue all sales and marketing activities in Florida which involve the use of sweepstakes or contest promotions.
- All American will make a voluntary contribution to the General Revenue Fund in the amount of \$32,400. All American will remit \$10,800 at the time that the offer is accepted and the show cause proceeding terminated. It would then make monthly payments in the amount of \$3,600 for the next six months.
- This offer would be in settlement of all complaints against All American based upon conduct occurring through the date of settlement.

Staff supports All American's proposal to cease all sales and marketing activities in Florida that pertain to sweepstakes or contest promotions. Staff believes this will eliminate the current source of All American's complaints. However, staff cannot support All American's proposal that this offer would be in settlement of all complaints against All American based upon conduct occurring

through the date of settlement. Staff's recommendation specified complaints closed by Consumer Affairs as apparent slamming violations from April 29, 1997 through January 20, 1998. The Order to Show Cause was issued based on this time frame. In addition, staff cannot support All American's monetary settlement proposal. Based on the consumer response from the public hearings held in the slamming rule docket and the fact that in recent show cause dockets regarding apparent slamming violations the Commission has approved fines of \$10,000 per violation, staff believes that the settlement offer is inadequate. All American's proposal is simply insufficient for the harm to the public interest that All American's apparent slamming violations have caused. In addition, since the show cause order was issued in February, All American's complaints are still on the increase. The Division of Consumer Affairs is now in receipt of 331 complaints regarding unauthorized carrier changes.

ISSUE 2: Should the Commission grant All American's Motion for Extension of Time to Respond to Order to Show Cause and Motion for Further Extension of Time to Respond to Order to Show Cause?

RECOMMENDATION: Yes. The Commission should grant both motions in order to provide All American an opportunity to pursue settlement negotiations with staff. (Pellegrini)

STAFF ANALYSIS: In Order No. PSC-98-0268-FOF-TI, issued February 10, 1998, the Commission ordered All American to show cause in writing within 20 days, or by March 2, 1998, why it should not have its certificate canceled or why it should not be fined \$370,000. On February 11, 1998, All American submitted a letter to staff in which it identified changes in its practices that it proposed be used as the basis for a settlement of the show cause proceeding. All American then filed a Motion for Extension of Time to Respond to Show Cause Order (First Motion) on February 26, 1998. In the First Motion, All American stated that it was engaged in discussions with staff with the objective of reaching a settlement. It requested a 15 day extension of time to respond to the show cause order.

On March 9, 1998, All American filed a proposal for settlement, consisting of two parts: the first, Changes to Sales, Marketing, and Customer Verification Practices; the second, Voluntary Contribution. At the same time, it filed a Motion for

Further Extension of Time to Respond to Order to Show Cause (Second Motion). In the Second Motion, All American stated that its settlement discussions had continued and that staff now had before it a settlement proposal. It requested that the Commission permit it 20 days following the Commission's decision on a staff recommendation on its settlement proposal in order to respond to the Commission's show cause order should that become necessary.

Staff recommends that the Commission grant both the First Motion and the Second Motion. All American has filed the Motions in order to facilitate its pursuit of a settlement of the apparent slamming violations. Staff believes it is appropriate to encourage the resolution of these matters through settlement negotiations. Should the Commission approve staff's recommendation in Issue 1, All American would as a result still have an opportunity to respond as required to Order No. PSC-98-0268-FOF-TI.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 1 is approved, this docket should remain open pending final resolution of the show cause proceeding. If All American does not timely file a protest of the Commission's proposed agency action order, the fine in the amount of \$370,000 should be deemed assessed. If the fine is not received within five business days after the expiration of the protest period, this docket should be closed.
(Pellegrini)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, this docket should remain open pending final resolution of the show cause proceeding. If All American does not timely file a protest of the Commission's proposed agency action order, the fine in the amount of \$370,000 should be deemed assessed. If the fine is not received within five business days after the expiration of the protest period, this docket should be closed.

FLEISCHMAN AND WAISH, I. L. P.

ATTORNEYS AT LAW

1400 SIXTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
TEL (202) 838-7900 FAX (202) 746-0818
INTERNET: fw@fw-law.com

AMNON L. FLEISCHMAN
FLEISCHMAN AND WAISH, R. C.
CHARLES S. WALSH
ARTHUR H. HANDLING
RYLAND F. FELDSTEIN
RICHARD RUBIN
STEPHEN A. ROSEN
N. BRUCE REICHEN
HOWARD S. SHAPIRO
CHRISTOPHER S. WOOD
BETH A. SAMPLSON
MITCHELL F. GREENBERG
JAMES F. HORNHAATY
MATTHEW D. ENGLISH
HOWARD A. TOBEL

VIA FAX AND OVERNIGHT MAIL

Charles Pelligrini, Esq.
Legal Division
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

June 19, 1998

JILL ELSBERG MCCLELLAND
ROBINA FERRIQUETTI PACE
RHETT D. WORNHAM
DAVID A. GILLET
MARK F. VILARDO
PETER J. SARACETTI
ROBERTY A. KELLY
ROBERT E. STUY, JR.
ANDREW M. FRIEDMAN
CERNA M. RESURIN
JOYCE M. WILSON
BRYAN N. SCHULTEN
ALEXANDER T. HADJILIN*
ALEX D. FULLSTROM**
ESTH-SHERIE ANTEREO
SHAM C. MALADY***

* UT PAID ONLY
** BY AIR MAIL ONLY
*** BY AIR MAIL ONLY

Re: Docket No. 971493-TT - In re Initiation of show cause proceedings against
All American Telephone, Inc. for violations of Rule 25-4.118, F.A.C.
Interexchange Carrier Selection

Dear Mr. Pelligrini:

On March 9, 1998, I sent to your office a letter setting forth a comprehensive offer to settle the above-captioned show cause proceeding which had been initiated against my client, All American Telephone, Inc. As you will recall, that proposal consisted of several important changes to All American's sales, marketing, and customer verification practices, as well as an offer to pay a voluntary contribution to the State Treasury in the amount of \$18,000. The payment amount proposed was based on a payment of \$500 per closed violation for each of the 37 violations asserted in the Show Cause Order to have been closed by the Commission's Consumer Affairs Division, less the one "violation" which involved the innocent and unintentional transposition of two digits of a customer's telephone number resulting in the wrong customer having its service switched.

Based upon several conversations between undersigned counsel and members of the Commission staff, and following consultation with the management of All American, I have been authorized to submit the following revised settlement offer:

1. Voluntary Payment - All American will make a voluntary payment in the amount of \$32,400 to the State Treasury. That amount represents \$900 per closed violation for each of the 36 "closed" complaints mentioned above. That is an increase of eighty percent per violation over the previous offer. All American proposes to make an initial payment of \$10,800 at the time that the offer is accepted and

Charles Pelligrini, Esq.
June 19, 1998
Page 2.

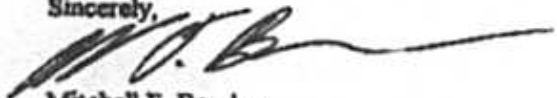
the show cause proceeding terminated. It would then make monthly payments in the amount of \$3,600 for the next six months.

2. Elimination of Sweepstakes - All American will immediately discontinue all sales and marketing activities in Florida which involve the use of sweepstakes or contest promotions. No contests will be conducted by All American or any of its agents, and no prizes will be awarded to randomly-selected persons. While All American may offer inducements such as free minutes of use or discounts to all customers signing up for its service, it will totally exit the sweepstakes aspect of the business.

This offer, if accepted, would be in settlement of all complaints against All American based upon conduct occurring through the date of settlement. All American believes that this revised settlement offer is fair and equitable to the Commission and to Florida consumers, and it is hopeful that the Commission will find this offer to be acceptable. In considering the size of the voluntary contribution proposed, please note that All American reported intrastate revenues during 1997 of only \$568,650 - an amount substantially below that reported by any other carrier which has had an offer to settle a slamming-related show cause order approved by the Commission. Moreover, by committing to discontinue all use of sweepstakes promotions in its marketing, All American is attempting to respond to articulated expressions of Commission and Staff concern about such marketing methods.

On behalf of All American, it is my hope that Staff and ultimately the Commission will find this offer to be acceptable and that this proceeding can be terminated by agreement between the parties. If there are any questions regarding this offer, please communicate directly with undersigned counsel for All American.

Sincerely,



Mitchell F. Brecher
Counsel for All American Telephone, Inc.

MEMORANDUM

June 22, 1998

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI) *PE*

RE: DOCKET NO. 971493-TI - Initiation of show cause proceedings against All American Telephone, Inc. for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

Attached is a LETTER FROM ALL AMERICAN TELEPHONE, INC. (SETTLEMENT OFFER DATED 6/19/98), to be filed in the above-referenced docket. (Number of pages in letter - 2)

CJP/slh
Attachment
cc: Division of Communications

ACK _____
AFA _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG _____
LIN _____
OPC _____
RCH _____
SEC 1 _____
WAS _____
OTH _____

DOCUMENT NUMBER-DATE

06595 JUN 22 98

FPC-RECORDS/REPORTING