



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-8850

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

DATE: SEPTEMBER 24, 1998

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

FROM: DIVISION OF COMMUNICATIONS (YAMBOR) *JJ*
DIVISION OF LEGAL SERVICES (PEÑA) *KMP* *MB*

RE: DOCKET NO. 980661-TI - REQUEST FOR CANCELLATION OF INTEREXCHANGE TELECOMMUNICATIONS CERTIFICATE NO. 3514 BY ACCESS TELECOM, INC. AND VIOLATION OF RULE 25-4.043, FLORIDA ADMINISTRATIVE CODE, RESPONSE TO COMMISSION STAFF INQUIRIES AND VIOLATION OF RULE 25-24.935, FLORIDA ADMINISTRATIVE CODE, DISCONTINUANCE OF SERVICE

AGENDA: 10/06/98 - REGULAR AGENDA - ISSUE 1 - PROPOSED AGENCY ACTION - ISSUES 2, 3- SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: THIS IS A REVISED RECOMMENDATION

FILE NAME AND LOCATION: S:\PSC\CMU\WP\980661TI.RCM

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CASE BACKGROUND

On May 14, 1998, Mr. David Shephard, Vice President of Access Telecom, Inc., (ATI) filed a request with the Commission seeking a voluntary certificate cancellation.

On May 26, 1998, staff mailed ATI a letter of response asking ATI to provide a statement of intent on: regulatory fees due, reason for cancellation, how ATI will accommodate its customers and the procedure used to ensure calling card continuity. Staff received no written response.

On August 3, 1998, staff again sent a letter requesting ATI to provide the aforementioned statement. Staff did not receive a response.

DOCUMENT NUMBER-DATE

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PSC-RECORDS/REPORTING

On August 10, 1998 staff learned that, on May 6, 1998, ATI was granted voluntary corporate dissolution by the Florida Secretary of State. Further, staff received notice that ABS Telecom, a marketing firm in California, had to return to customers \$18,967 (Attachment A, Pg. 6) because of ATI's allegedly dishonored prepaid calling cards.

Further, on September 8, 1998, staff was notified by Global Telecommunication Solutions, Inc., a company in Pennsylvania, that it has incurred nearly \$2,000,000 in liability because ATI has dishonored its prepaid cards.

In light of these facts, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant ATI a voluntary cancellation of certificate No. 3514?

RECOMMENDATION: No. (Yamvor)

STAFF ANALYSIS: Rule 25-24.474 (2) (a), (b), (c) and (d), Florida Administrative Code, Violation of Commission Rule or order, in part, states:

- (2) If a certificated company desires to cancel its certificate it shall provide:
 - (a) statement of intent and date to pay regulatory assessment fees
 - (b) statement of why the certificate is proposed to be canceled
 - (c) a statement on treatment of customer deposits and final bills
 - (d) proof of individual customer notice regarding discontinuance of service

Moreover, Rule 25-24.935, Florida Administrative Code, Discontinuance of Services, states:

A company shall be responsible for ensuring, either through its contract with its network provider, distributors, or marketing agents,

or other means, that end user purchased cards
remain usable in accord with Rule 25-24.920 (10)

Staff did not receive the required response for the Commission to grant cancellation and staff believes ATI has sold Prepaid Cards that are unusable. Therefore, staff recommends that the request for voluntary cancellation be denied.

ISSUE 2: Should the Commission order ATI to show cause why it should not have Certificate Number 3514 canceled or be fined \$10,000 for apparent failure to comply with Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. The Commission should order ATI to show cause in writing within 21 days of the issuance date of the order why it should not be fined \$10,000 or have its certificate canceled for failure to comply with Rule 25-4.043, Florida Administrative Code. Any collected fine monies should be forwarded to the Office of the Comptroller for deposit in the state General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. (Yambor)

STAFF ANALYSIS: Pursuant to Section 364.285, Florida Statutes, the Commission may impose a fine or cancel a certificate if a company fails to comply with Commission rules. Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, requires a reply to staff inquiries be furnished in writing within (15) days of the Commission inquiry. On May 26, 1998 and again on August 3, 1998, staff sent ATI correspondence asking it to provide the required response to the Commission in order to grant cancellation. It has been over 120 days since the first contact and ATI has not responded

Accordingly, staff recommends that the Commission assess a \$10,000 fine for failure to comply with Commission rules or cancel certificate No. 3514 if the fine is not paid within the specified time.

ISSUE 3: Should the Commission order ATI to show cause why it should not be fined \$25,000 for apparent failure to comply with Rule 25-24.935, Florida Administrative Code, Discontinuance of service?

RECOMMENDATION: Yes. The Commission should order ATI to show cause in writing within 21 days of the issuance date of the order why it should not be fined \$25,000 for failure to comply with Rule 25-24.935, Florida Administrative Code. Any collected fine monies should be forwarded to the Office of the Comptroller for deposit in the state General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. (Yambor)

STAFF ANALYSIS: It appears ATI ceased to do business in Florida as of May 6, 1998 and failed to comply with Commission rules as shown in Issues 1 and 2. Also, indications are that ATI sold multiple Prepaid Calling Cards throughout the United States just days before it ceased doing business. These cards identify ATI as the long distance carrier and it appears these cards are no longer valid. For instance, ABS Telecom was forced to return monies of \$18,967 for apparently worthless ATI cards. Global Telecommunication Solutions asserts it has incurred \$2,000,000 in liabilities because of ATI's actions.

Accordingly, 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 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. 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 ATI's apparent conduct and actions have 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, Florida Administrative Code, 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

ATI's conduct at issue here, would meet the standard for a "willful violation."

Staff believes ATI has apparently acted in willful disregard of the Commission Rules and the Commission should order ATI to show cause why it should not be fined in the amount of \$25,000.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issues 1 and 2 are approved, then ATI will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If staff's recommendation in Issue 3 is approved, then ATI will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed. If ATI timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If ATI does not respond to the Show Cause Order, the fines should be deemed assessed. Staff recommends that if ATI fails to respond to the Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period then ATI's certificate should be canceled as a result of Issue 2 and the fine assessed in Issue 3. This docket can then be closed administratively. If after reasonable efforts the Commission is unable to collect the fine, then it should be forwarded to the Comptroller's Office for collection. (Pena)

STAFF ANALYSIS: If staff's recommendation in Issues 1 and 2 are approved, then ATI will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If staff's recommendation in Issue 3 is approved, then ATI will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed. If ATI timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If ATI does not respond to the Show Cause Order, the fines should be deemed assessed. Staff recommends that if ATI fails to respond to the Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period then ATI's certificate should be canceled as a result of Issue 2 and the fine assessed in Issue 3. This docket can then be closed administratively. If after reasonable efforts the Commission is unable to collect the fine, then it should be forwarded to the Comptroller's Office for collection.



Promotional Sales Division
1971 East 4th Street, Suite 330
Santa Ana, CA 92705
Phone: (714) 838-4900

DOCKET NO. 980861-T1
September 24, 1998

August 10, 1998

Access Telecom, Inc.
c/o Patrick T. Lennon, Esquire
P.O. Box 1531
Tampa, FL 33601

RE: Refund From The Purchase Of Prepaid Phone Service On Prepaid Phone Cards From
Access Telecom That Is No Longer Available.

Dear Mr. Lennon,

In response to your correspondence of May 12, 1998, Notice of Dissolution. Access Telecom went out of business owing myself and my customers thousands of dollars. Since they have chosen to shut their doors I have had to take responsibility for them. This responsibility they owe to my customers and myself. I prepaid for all the services that were supplied by Access Telecom. They had no problem taking my money and spending it. I am appalled at them for stating that they only owe me \$149.12 as stated in the notice that was sent to me. I have several hundred cards that I had printed that were purchased from Access Telecom only a week before they shut down.

Since their system went dead, I have been receiving calls from customers that are dissatisfied with the prepaid phone cards services that I sold them. I have had to return moneys to date in the amount of \$18,967. I had to take out a loan for \$6,500 the first time and then I had to take out an additional loan of \$12,000 to cover Access Telecom's liabilities. I want this money paid back to me.

I also had a very nice growing recharge business that was also shut down when Access Telecom ceased doing business. These customers would recharge their cards up to \$50 each time making me several hundred dollars each month. Access Telecom has destroyed my phone card business and three years of work is now washed away. I feel that despite what I am out of pocket, I also have damages of \$50,000 for their lack of responsibility and destroying my reputation and business. It is only fair that I be compensated for their lack of responsibility, I had nothing to do with their business problems.

I await your response.

Sincerely,

Art Shulman
ABS Telecom

cc:
Communication Division of Florida