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REVISED  
*WJ*

State of Florida



# Public Service Commission

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

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**DATE:** March 22, 2001

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (BANKS) *DB*  
DIVISION OF COMPETITIVE SERVICES (BUYS/KENNEDY) *RK*  
DIVISION OF CONSUMER AFFAIRS (C. PEÑA) *CS*

**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, OR TOLL PROVIDER SELECTION.

DOCKET NO. 001813-TX - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST AMERICA'S TELE-NETWORK CORP. FOR APPARENT VIOLATION OF RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES.

**AGENDA:** 04/03/01 - REGULAR AGENDA - SHOW CAUSE - 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. (AT-N) was granted Certificate No. 4377 to provide interexchange (IXC) telecommunications services within the State of Florida.

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FPCO-RECORDS REPORTING

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- April 15, 1997 - AT-N was granted Certificate No. 4834 to provide alternative local exchange (ALEC) telecommunications services within the State of Florida.
- March 7, 1996 through August 7, 2001 - Staff closed 201 complaints against AT-N's IXC operation for apparent unauthorized carrier change (slamming) infractions.
- August 7, 2000 - Staff opened Docket No. 001066-TI to initiate show cause proceedings against AT-N for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection.
- September 14, 2000 - Staff filed a recommendation to order AT-N to show cause why it should not be fined or have its certificate canceled for the apparent violations of Rule 25-4.118, Florida Administrative Code.
- September 25, 2000 - Docket No. 001066-TI was deferred from the September 26, 2000, Agenda Conference at the request of AT-N.
- October 23, 2000 through December 7, 2000 - Staff had several discussions with Mr. Paul A. Dean, Regulatory Counsel for AT-N, regarding a settlement proposal from AT-N.
- December 20, 2000 - Staff determined that AT-N had not responded to 158 complaints against its IXC operations and five complaints against its ALEC operations filed with the Florida Public Service Commission (Commission).
- December 22, 2000 - Staff opened Docket No. 001813-TX to initiate show cause proceedings against AT-N for apparent violation of Rule 25-4.043, Response to Commission Staff Inquiries, Florida Administrative Code, for failing to respond to five complaints against the company's ALEC operation.
- January 8, 2001 through February 2, 2001 - Staff continued discussions with Mr. Paul A. Dean regarding a settlement proposal from AT-N for Docket Nos. 001066-TI and 001813-TX.
- January 24, 2001 - At Mr. Dean's request, staff faxed Mr. Dean a list of the 163 (158 against its IXC and five against its ALEC) consumer complaints filed with the Commission to which AT-N has not responded.
- February 9, 2001 - AT-N submitted its second revised final settlement proposal, dated February 9, 2001, to resolve the

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apparent violations cited in Dockets Nos. 001066-TI and 001813-TX (Attachment A, pages 10 & 11).

- February 19, 2001 - AT-N reported gross operating revenues of \$1,086,894.55 for interexchange services and \$00.00 for alternative local exchange services on its Regulatory Assessment Fee Returns for the period January 1, 1999 through December 31, 2000.

As of March 7, 2001, staff has closed 299 complaints against AT-N as slamming infractions. Also, data in the Commission's Consumer Activity Tracking System indicates that AT-N has not responded within the required time of fifteen working days to 161 complaints. Since February 9, 2001, the commission has received six complaints against AT-N.

The Florida Public Service Commission is vested with jurisdiction over these matters pursuant to Sections 364.01, 364.183, 364.285, and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission accept the second revised final settlement offer, dated February 9, 2001, proposed by AT-N to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection in Docket No. 001066-TI?

**RECOMMENDATION:** Yes. Staff recommends that the Commission accept AT-N's second revised final settlement offer dated, February 9, 2001, to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection in Docket No. 001066-TI.

AT-N should be required to file a report with the Commission by May 11, 2001, expounding how AT-N has complied with its settlement offer and provided restitution to all of the individuals who have filed a complaint against its IXC operations, up to and including the date of issuance of the Commission's Order. According to its settlement offer, AT-N's Certificate No. 4377 should be canceled and the company should cease operations in Florida by March 31, 2001.

If AT-N fails to file a report with the Commission by May 11, 2001, and demonstrate that it has complied with its settlement offer and provided restitution to all the individuals who filed a complaint with the Commission up to and including the date of issuance of the Commission's Order, further show cause proceedings should be initiated. **(Banks, Buys)**

**STAFF ANALYSIS:** Between July 1, 1999, and March 7, 2001, the Commission received 386 complaints from consumers claiming they were slammed by AT-N. Staff determined that 203 of those complaints were closed as apparent slamming infractions. An additional 96 complaints received between March 7, 1996, and June 28, 1999, were also closed as slamming violations.

The 96 apparent slamming infractions received between March 7, 1996, and June 28, 1999, occurred when the previous slamming rule (Attachment C, Pages 13 & 14) was in effect and were evaluated with respect to that rule. The other 203 infractions were evaluated with respect to the current rule (Attachment D, Pages 15 & 16). The majority of all 299 infractions, 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, AT-N could not produce the LOA or TPV tape. The TPV tapes that were received by the Commission's staff were either not discernible, or did not contain the proper information for verification and/or authorization as required by Rule 25-4.118(2)(C), Florida Administrative Code.

Furthermore, at least 61 complainants reported they were never contacted by an AT-N representative and discovered they had been slammed when they reviewed their telephone bill. AT-N could not produce an LOA or TPV recording to confirm any contact with the 61 customers. Moreover, 12 of the complainants reported that a telemarketer misled them into believing they were talking to an AT&T representative about AT&T services, when in fact they were being solicited by AT-N.

Staff filed a recommendation to the Commission on September 14, 2000, to order AT-N to show cause why it should not be fined a total of \$2,840,000 (for 284 slamming violations closed as of that date) or have its certificate canceled pursuant to Section 364.285(1), Florida Statutes for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection. At AT-N's request, this item was deferred from the September 26, 2000, Agenda Conference.

Subsequently, staff participated in ongoing discussions with regulatory counsel for AT-N in an attempt to resolve the apparent slamming infractions. As a result of the discussions, AT-N decided to cease all operations in Florida and agree to an involuntary cancellation of its IXC certificate rather than pay a fine it could not absorb. On February 9, 2001, AT-N submitted its second revised final settlement proposal. In its settlement proposal, AT-N has stated that it has ceased marketing in Florida on October 1, 2000, and also ceased active operations other than minimal customer maintenance actions. In its settlement proposal, AT-N further agreed to do the following:

- Not to object to the involuntary cancellation of its Certificate of Public Convenience and Necessity (No. 4377) to provide long distance service.
- Provide restitution by February 28, 2001, for all Florida customers who filed a complaint before the date of its settlement (February 9, 2001) with either the company (AT-N) or the Commission. Such restitution shall include full

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compensation for all 158 of the outstanding alleged complaints against AT-N in the State of Florida.

- Notify each Florida customer in writing by March 1, 2001 that operations will effectively cease March 31, 2001. (Attachment B, Page 12)

AT-N has decided to cease providing IXC services in Florida by March 31, 2001, rather than offering a monetary settlement in lieu of showing cause or paying a fine for the apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection.

This recommendation is consistent with the previous decision in Docket Number 980165-TI, Initiation of Show Cause Proceedings Against Amer-I-Net Services Corp. For Violation Of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, and Rule 25-4.043, Florida Administrative Code, Response To Commission Staff Inquiries.

Based on the foregoing, staff recommends that the Commission accept AT-N's second revised final settlement offer dated, February 9, 2001, to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection in Docket No. 001066-TI. AT-N should be required to file a report with the Commission by May 11, 2001, expounding how AT-N has complied with its settlement offer and provided restitution to all of the individuals who have filed a complaint against its IXC operations, up to and including the date of issuance of the Commission's Order. According to its settlement offer, AT-N's Certificate No. 4377 should be canceled and the company should cease operations in Florida by March 31, 2001. If AT-N fails to file a report with the Commission by May 11, 2001, and demonstrate that it has complied with its settlement offer and provided restitution to all the individuals who filed a complaint with the Commission up to and including the date of issuance of the Commission's Order, further show cause proceedings should be initiated.

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**ISSUE 2:** Should the Commission accept the second revised final settlement offer, dated February 9, 2001, proposed by AT-N to resolve the apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, in Docket No. 001813-TX.

**RECOMMENDATION:** Yes. Staff recommends that the Commission accept AT-N's second revised final settlement offer, dated February 9, 2001, to resolve the apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, in Docket No. 001813-TX. AT-N should be required to file a report with the Commission by May 11, 2001, expounding how AT-N has complied with its settlement offer and provided restitution to the five individuals who have filed a complaint against its ALEC operations. According to its settlement offer, AT-N's Certificate No. 4834 should be canceled and the company should cease operations in Florida by March 31, 2001.

If AT-N fails to file a report with the Commission by May 11, 2001, and demonstrate that it has provided restitution to the five individuals who have filed a complaint against its ALEC operations, further show cause proceedings should be initiated. **(BANKS, BUYS)**

**STAFF ANALYSIS:** On December 20 2000, staff determined that AT-N had not responded to five complaints filed against its ALEC operation within 15 days as required by Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, which states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

On December 22, 2000, staff opened Docket No. 001813-TX to initiate show cause proceedings against AT-N for apparent violations of Rule 25-4.043, Response to Commission Staff Inquiries, Florida Administrative Code.

During on going discussions with AT-N regarding the proposed settlement offer for apparent slamming infractions cited in Docket No. 001066-TI, staff suggested that AT-N also propose to include Docket No. 001813-TX in its current settlement offer to resolve the apparent violations of Rule 25-4.043, Florida Administrative Code. In its settlement offer, AT-N also agreed to not object to the involuntary cancellation of its ALEC Certificate (No. 4834).

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AT-N has decided to cease providing ALEC services in Florida by March 31, 2001, rather than offering a monetary settlement in lieu of showing cause or paying a fine for the apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection.

Based on the foregoing, staff recommends that the Commission accept AT-N's second revised final settlement offer, dated February 9, 2001, to resolve the apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, in Docket No. 001813-TX. AT-N should be required to file a report with the Commission by May 11, 2001, expounding how AT-N has complied with its settlement offer and provided restitution to the five individuals who have filed a complaint against its ALEC operations. According to its settlement offer, AT-N's Certificate No. 4834 should be canceled and the company should cease operations in Florida by March 31, 2001. If AT-N fails to file a report with the Commission by May 11, 2001, and demonstrate that it has provided restitution to the five individuals who have filed a complaint against its ALEC operations, further show cause proceedings should be initiated.



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**ISSUE 3:** Should these dockets be closed?

**RECOMMENDATION:** No. If the Commission approves staff's recommendations, AT-N's Certificates Nos. 4377 and 4834 will be involuntarily canceled upon issuance of this Order. If AT-N complies with its settlement offer, Dockets Nos. 001066-TI and 001813-TX should be closed administratively. If however, AT-N fails to show that it has complied with its settlement offer by May 11, 2001, these dockets should remain open pending further show cause proceedings. **(Banks)**

**STAFF ANALYSIS:** If the Commission approves staff's recommendations, AT-N's Certificates Nos. 4377 and 4834 will be involuntarily canceled upon issuance of this Order. If AT-N complies with its settlement offer, Dockets Nos. 001066-TI and 001813-TX should be closed administratively. If however, AT-N fails to show that it has complied with its settlement offer by May 11, 2001, these dockets should remain open pending further show cause proceedings.

DATE: March 22, 2001

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Staff Counsel Banks/Dale Buys  
Docket no. 001066  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Second Revised Final Settlement Proposal of America's Tele-  
Network, Inc., Docket Nos. 001066 and 001813

Felicia, Dale and staff:

1. On behalf of America's Tele-Network, Inc. ("AT-N" or "the company") we hereby respectfully tender the company's second revised final settlement offer to terminate the initiation of show cause proceedings in Docket nos. 001066 and 001813 for apparent violations of Rules 25-4.118 and 25-4.043 F.A.C., as per our Friday, February 2 discussion with staff.

2. The company agrees not to object to the involuntary cancellation of its Certificates of Public Convenience and Necessity to provide long distance (no. 4377) and local services (no. 4834). This agreement in no way constitutes an admission of wrongdoing on the part of the company or its agents, rather said agreement reflects the legal and financial exigencies facing the company in the current hostile business and regulatory environment.

3. AT-N also agrees to provide restitution by February 28, 2001 for all Florida customers who filed a complaint before the date of this settlement with either the company or the Commission. Such restitution shall include full compensation for all 158 of the outstanding alleged complaints against AT-N in the state of Florida.

4. In return for the concessions offered in paragraphs 2 and 3, the Company understands that the Florida Public Service Commission will accept its Certificates in lieu of the fines currently being sought in the proceedings denoted

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by the docket numbers 001066 and 001813 or any other dockets arising from complaints against AT-N within the timeframe covered by this settlement, to wit, from February 1996 through February 9, 2001.

5. In addition, the Company further understands that no new proceedings will be brought against AT-N for violations that occurred in the time frame set forth in paragraph 4.

6. As stated previously, the Company ceased marketing in the state on Oct. 1, 2000 and has also ceased active operations other than minimal customer maintenance actions. Each AT-N customer will be notified in writing by March 1, 2001 that operations will effectively cease March 31, 2001. Said customer notice is submitted herewith for Commission approval.

7. AT-N appreciates the Commission's staff willingness to work towards a realistic solution and their professionalism in these negotiations.

Respectfully submitted,

  
Paul A. Dean

AT-N Regulatory Counsel for Florida

CC: AT-N

DATE: March 22, 2001



America's Tele-Network Corp.

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February 9, 2001

ANY CUSTOMER  
STREET ADDRESS  
CITY, STATE, ZIP

Re: URGENT NOTICE - YOUR ACTION REQUIRED  
America's Tele-Network, Inc.

DEAR CUSTOMER:

As you may well be aware, residential long distance companies across the country, including the "Big 3," AT&T, WorldCom and Sprint, are experiencing increased pressure on their bottom lines. These troubled times arise from the hyper-competitive environment in the long distance industry. If these conditions cause the likes of AT&T to struggle, they make it impossible for a small business like our company to continue its operations.

The company will cease its Florida operations on March 31, 2001. What this means for you as a customer is simply this: **YOU MUST SELECT A NEW LONG DISTANCE CARRIER BEFORE THIS DATE TO AVOID AN INTERRUPTION OF SERVICE. YOUR LOCAL PHONE SERVICE IS NOT AFFECTED BY THIS NOTICE AS WE DO NOT PROVIDE ANY LOCAL SERVICES IN FLORIDA.**

It has been our privilege to serve you. Thank you.

Sincerely,

John D. Little  
President AT-N

**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

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.

**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.