

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of NORTH AMERICAN INTELECOM, INC. for incorrect billing of collect calls from various prisons.

DOCKET NO. 930416-TC

In re: Initiation of show cause proceedings against North American InTelecom, Inc. for violation of Commission rules and orders.

DOCKET NO. 950149-TC
ORDER NO. PSC-97-1068-FOF-TC
ISSUED: September 9, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
JOE GARCIA

ORDER ON DISPOSITION OF REFUNDS FOR OVERCHARGES

BY THE COMMISSION:

Currently, two show cause dockets are open against North American InTelecom, Inc. (NAI). On July 26, 1993, Order No. PSC-93-1083-FOF-TC was issued in Docket No. 930416-TC ordering NAI to show cause why it should not be fined or have its certificate canceled for charging rates in excess of the pay telephone rate cap established by Order No. 24101. Docket No. 950149-TC was opened in February 1995, to address alleged violations not covered by Order No. PSC-1083-FOF-TC. On March 14, 1995, Order No. PSC-95-0349-FOF-TC was issued requiring NAI to show cause why it should not be fined or have its certificate canceled for seven alleged violations of various pay telephone rules. NAI filed timely responses to each show cause order and requested a hearing on the allegations.

NAI, in an attempt to avoid the uncertainty and expense of litigation, filed a motion to refer the dockets to voluntary mediation. On April 6, 1995, the prehearing officer referred these dockets to mediation by Order No. PSC-95-0452-PCO-TC.

DOCUMENT NUMBER-DATE

09055 SEP-95

FPSC-RECORDS/REPORTING

NAI and staff met in mediation on June 8, 1995 and June 21, 1995. During mediation, staff and NAI agreed upon a mechanism to present the issues to the Commission for resolution. It was agreed that NAI would file two settlement proposals. Settlement Proposal I would dispose of the issues on which staff and NAI agreed. Settlement Proposal II would present for resolution the issues on which staff and NAI did not reach agreement. This bifurcated settlement mechanism gave the Commission the option of approving the settlement in part and rejecting other portions.

By Order No. PSC-96-0354-AS-TC, issued March 13, 1996, the Commission approved Settlement Proposal I. Under Settlement Proposal I NAI agreed:

- (1) to make a voluntary contribution to the General Revenue Fund of \$25,000;
- (2) to refund \$35,000, plus interest, for the six facility misrating problem; and
- (3) to refund at least \$15,000 for the AT&T discount rounding problem.

By Order no. PSC-96-0647-AS-TC, issued May 10, 1996, the commission accepted Settlement Proposal II. Under Settlement Proposal II, NAI agreed:

to audit its records from January 1, 1993 through July 1, 1994 and refund directly to customers the entire amount overcollected due to the one-minute billing problem plus interest.

The audit revealed that NAI was to refund approximately \$376,000 for the one minute rounding problem, plus interest.

NAI has now fulfilled its obligations under the settlement orders. As expected, however, even after diligent effort, NAI has not been able to locate all of the overcharged customers. Of the total amount NAI agreed to attempt to refund, \$91,814 remains. NAI has asked that it be permitted to keep the unrefundable amount. In addition, the Florida Department of Corrections (DOC) submitted its proposal that the \$91,814 should be remitted to the Inmate Welfare Trust Fund. Upon review, for the reasons explained below, we find that NAI shall remit \$91,814 to the Commission for deposit in the

State of Florida General Revenue Fund within 15 days of the date this Order becomes final.

The Department of Corrections' Request

On March 10, 1997, the Florida Department of Corrections (DOC) submitted a proposal asking that the remaining unrefundable monies be remitted to the Inmate Welfare Trust Fund. Although we note that in one previous docket (See Order No. PSC-92-1063-AS-TI, Docket No. 910666-TI.) we allowed unrefundable monies to be deposited in the Inmate Welfare Trust Fund, we do not believe such a disposition of the monies is appropriate here. Under its contract with DOC, NAI paid into the Inmate Welfare Trust Fund on an ongoing basis 34% of all collections. Thus, NAI's over collections resulted in an additional \$155,051 that has already been paid into the Inmate Welfare Trust Fund. Moreover, all the calls that resulted in the over collection were collect calls from inmates. The inmates did not pay for any of these calls; the end users were typically the inmate's family, friends, or attorney. Many families have expressed opposition to the suggestion that the Inmate Welfare Trust Fund receive the money.

We believe that if the unrefundable monies are remitted to the State General Revenue Fund, which is used to support the various state agencies that provide services to the citizens of the state, the end users who were harmed will receive some benefits from services provided by the State of Florida.

NAI's Proposal

With its final report NAI submitted a proposal on how it believes the remaining \$91,814 in unrefundable overcharges should be handled. In its proposal NAI states that it should not be required to "forfeit" the \$91,814. In other words, NAI believes that it should be allowed to keep the \$91,814.

NAI contends in its proposal that legally its liability was substantially less than the amounts alleged to have been overcollected. Thus, from NAI's perspective, the unrefundable money (\$91,814) is not money that it owes to anyone. NAI characterizes the \$91,814 as simply the remainder of the disputed refund amount. NAI contends that there are only three "corrective measures" we can take against it with respect to the overcollections. According to NAI, the Commission can: require restitution to be made to those harmed; require forfeiture of the

overcollections to prevent unjust enrichment; or impose punitive sanctions.

NAI states that it has already made restitution where practical. Therefore, NAI contends, if we require it "to forfeit" the \$91,814, that action would be a measure designed to prevent unjust enrichment or to punish NAI.

NAI then argues that requiring it to forfeit the \$91,814 cannot be viewed as a measure to prevent unjust enrichment. In sponsoring the settlement mediation and implementing its provisions NAI alleges that it incurred costs of at least \$236,000. NAI states that for every \$1.00 allegedly overcollected, it has paid out at least \$1.61. Therefore, NAI contends, requiring it to forfeit the disputed amount cannot be a measure to prevent unjust enrichment.

Next, NAI argues that since the required forfeiture of the \$91,814 cannot be viewed as either a measure to achieve restitution or to prevent unjust enrichment, it can only be viewed as a measure to punish NAI. NAI states that the Commission cannot impose an additional sanction against NAI because under the settlement Order NAI made a voluntary contribution to the General Revenue fund of \$25,000 in settlement of all potential sanctions in these dockets (PSC-96-0354-AS-TC).

We agree that NAI has made appropriate refunds to those end users it could locate, and that NAI incurred costs in sponsoring mediation and implementing the order. We also agree that we cannot impose an additional sanction in these dockets because NAI made a voluntary contribution of \$25,000 to the State of Florida General Revenue fund as a settlement to prevent additional sanctions.

We do not agree, however, with NAI's assertion that we would be imposing an additional penalty if we do not permit NAI to keep the \$91,814 unrefundable amount. NAI is simply not entitled to any of the money it overcollected from end users. Whether one calls such a proposal "unjust enrichment," or simply a violation of fundamental rules of fairness, we cannot condone such a proposal and permit NAI to keep any of the money it agreed to refund. Costs of mediation, attorney's fees, and refunds are the costs of doing business under these circumstances, and these costs should not be recouped from funds overcollected from end users.

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We have not found any prior Commission decision that has allowed a company to keep funds that it could not directly refund to customers. The Commission has a fundamental interest in ensuring to the greatest extent possible that companies subject to its jurisdiction fully comply with its rules and orders, including its orders approving settlements and refunds to customers. We would surely be hindered in doing so if we adopted a proposal such as NAI's. A company would have little incentive to make adequate refunds to customers if it knew that it would be permitted to keep the amounts it could not return. NAI is liable for the entire amount that was subject to refund; therefore, the company should not keep this unrefundable money.

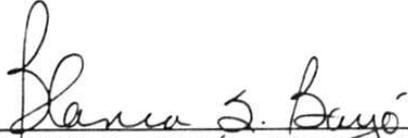
Accordingly, we direct NAI to remit \$91,814 to the Commission for deposit in the State of Florida General Revenue Fund within 15 days of the date this Order becomes final. These dockets should be closed upon NAI's remittance of \$91,814 to the Commission for deposit in the State of Florida General Revenue Fund.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that North American InTelecom, Inc. shall remit \$91,814 to the Commission for deposit in the State of Florida General Revenue Fund within 15 days of the date the Order in these dockets becomes final. It is further

ORDERED that these dockets should be closed upon NAI's remittance of \$91,814 to the Commission.

By ORDER of the Florida Public Service Commission this 9th day of September, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.