



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

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RECEIVED FPSC

DATE: OCTOBER 7, 1999

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

FROM: DIVISION OF LEGAL SERVICES (WATTS) *CBW BK*
DIVISION OF COMMUNICATIONS (BIEGALSKI) *RK/KB*

RE: DOCKET NO. 991305-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST ATLANTIC TELEPHONE COMPANY, INC. FOR APPARENT VIOLATION OF RULE 25-4.118, F.A.C., LOCAL, LOCAL TOLL, OR TOLL PROVIDER SELECTION (FORMERLY INTEREXCHANGE CARRIER SELECTION), AND RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 10/19/99 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\991305.RCM

CASE BACKGROUND

- January 3, 1992 - Atlantic Telephone Company, Inc. (Atlantic) obtained Interexchange Telecommunications certificate number 2697.
- January 21, 1998 - Atlantic reported \$362,878.86 gross intrastate revenues on its 1997 regulatory assessment fee form. Atlantic has not paid its 1998 regulatory assessment fees.
- December 10, 1998 - 1998 Regulatory Assessment Fee forms mailed.
- March 17, 1999 - Delinquent notices were mailed for the 1998 regulatory assessment fees.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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- March 23, 1999 - Staff received information from a former Atlantic employee regarding Atlantic changing its underlying carrier which resulted in numerous customers being slammed.
- July 30, 1999 - Staff mailed a certified letter to Atlantic regarding its responses to the consumer complaints.

EXECUTIVE SUMMARY

ISSUE	VIOLATION	RECOMMENDATION
Issue 1	Rule 25-4.118(1), F.A.C., Local, Local Toll, or Toll Provider Selection (Formerly Interexchange Carrier Selection)	Fine \$160,000 or cancel cert.
Issue 2	Rule 25-4.118(5), F.A.C., Local, Local Toll, or Toll Provider Selection (Formerly Interexchange Carrier Selection)	Fine \$80,000
Issue 3	Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries	Fine \$10,000
Issue 4	Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies	Fine \$500

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Atlantic Telephone Company, Inc. to show cause why it should not be fined \$160,000 or have certificate number 2697 canceled for apparent violation of Rule 25-4.118(1), Florida Administrative Code, Local, Local Toll, or Toll Provider Selection (Formerly Interexchange Carrier Selection)?

RECOMMENDATION: Yes. The Commission should order Atlantic to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have certificate number 2697 canceled or be fined \$160,000 for apparent violation of Rule 25-4.118(1), Florida Administrative Code, Local, Local Toll, or Toll Provider Selection (Formerly Interexchange Carrier Selection). The company's response should contain specific allegations of fact or law. If Atlantic fails to respond to the show cause, and the fines are not paid within 10 business days after the 21 day show cause period, certificate number 2697 should be canceled. If the fines are paid, they should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. Atlantic should submit a written report to staff within 90 days of the order becoming final of all customers that were switched without authorization to Atlantic that have not been switched back to their preferred carrier. (Biegalski)

STAFF ANALYSIS: On March 22, 1999, staff received notification from a former employee that Atlantic decided to let Frontier Communications carry its traffic in lieu of carrying it over its own lines, which resulted in numerous customers being slammed. This happened because Atlantic simply turned the customer's telephone number off in its switch in lieu of deleting customer information from its database when a customer left its company. This procedure made it easier if Atlantic were to try to "win" the customer back at a later date. Consequently, when Atlantic downloaded its customer information to Frontier, its new underlying carrier, all customer information was downloaded, including the potential "win back" customers that were not deleted from its database. This resulted in former customers being changed back to Atlantic without authorization. Therefore, based on the 16 consumer complaints that have been determined to be apparent unauthorized carrier changes in relation to this problem, it appears that Atlantic is in violation of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, which states, in pertinent part:

(1) The primary interexchange company (PIC) of a customer shall not be changed without the customer's authorization.

Upon receipt of customer complaints related to this problem, staff forwarded them to Atlantic for response. Atlantic responded

to the complaints by stating that in the process of changing its underlying carrier, the company switched its past customers to its new underlying carrier. Atlantic further states that as it became aware of the problem through customer inquiries, it switched each customer back to the preferred carrier. It is staff's belief that Atlantic was aware of the potential problem before it occurred and took no action to prevent it. Atlantic's only action was to switch customers back to their preferred carrier after the unauthorized change occurred.

Accordingly, staff recommends that the Commission order Atlantic to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have certificate number 2697 canceled or be fined \$160,000 for apparent violation of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection (Formerly Interexchange Carrier Selection). The company's response should contain specific allegations of fact or law. If Atlantic fails to respond to the show cause, and the fines are not paid within 10 business days after the 21 day show cause period, certificate number 2697 should be canceled. If the fines are paid, they should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. Atlantic should submit a written report to staff within 90 days of the order becoming final of all customers that were switched without authorization to Atlantic that have not been switched back to their preferred carrier.

ISSUE 2: Should the Commission order Atlantic Telephone Company, Inc. to show cause why a fine of \$80,000 should not be imposed for violation of Rule 25-4.118(5), Florida Administrative Code, Local, Local Toll and Toll Provider Selection (Formerly Interexchange Carrier Selection), to rerate customers affected by the unauthorized changes in service in accord with Rule 25-4.118(5), Florida Administrative Code, Local, Local Toll and Toll Provider Selection (Formerly Interexchange Carrier Selection), and to cease collection activity on these accounts?

RECOMMENDATION: Yes. The Commission should order Atlantic to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$80,000 for apparent violation of Rule 25-4.118(5), Florida Administrative Code, to rerate customers affected by the unauthorized changes in service in accord with Rule 25-4.118(5), Florida Administrative Code, and to cease collection activity on these accounts. The company's response should contain specific allegations of fact or law. If Atlantic fails to respond to the show cause order, the fine should be deemed assessed. If the fine is not paid within ten business days after the Order becomes final, it should be forwarded to the Office of the Comptroller for collection. 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. Atlantic should complete the rerates and credits within 90 days of the order becoming final. Atlantic should submit monthly status reports due on the last day of each month to staff until all rerates and credits have been issued. (Biegalski)

STAFF ANALYSIS: Atlantic states in its responses to the customer complaints that it expects payment in full for services rendered. (Attachment A, Page 10) Therefore, it appears that Atlantic is in violation of Rule 25-4.118(5), Florida Administrative Code, which states in pertinent part:

Charges for unauthorized PIC changes and higher usage rates, if any, over the rates of the preferred company shall be credited to the customer by the IXC responsible for the error within 45 days of notification.

In response to Atlantic's position, staff mailed Atlantic a certified letter on July 30, 1999, and stated that Atlantic's position that customers are expected to pay in full for services rendered is an apparent violation of Rule 25-4.118, Florida Administrative Code, and to ensure compliance with the rule Atlantic should take immediate action to credit customer's accounts in accordance with the rule. The letter was signed for and received on August 2, 1999, but to date staff has not received a written response. After further investigation, staff determined that the sixteen unauthorized PIC changes occurred prior to the

effective date of the new slamming rules, therefore, Atlantic only needed to rerate the charges these customers incurred because the unauthorized changes occurred before the implementation of the new slamming rules. However, Atlantic has failed to notify staff of any rerates and credits issued.

Therefore, because it appears that Atlantic has not rerated the customers bills nor issued credits for the difference in rates, staff believes the Commission should order Atlantic to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$80,000 for apparent violation of Rule 25-4.118(5), Florida Administrative Code, to rerate customers affected by the unauthorized changes in service in accord with Rule 25-4.118(5), Florida Administrative Code, and to cease collection activity on these accounts. The company's response should contain specific allegations of fact or law. If Atlantic fails to respond to the show cause order, the fine should be deemed assessed. If the fine is not paid within ten business days after the Order becomes final, it should be forwarded to the Office of the Comptroller for collection. 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. Atlantic should complete the rerates and credits within 90 days of the order becoming final. Atlantic should submit monthly status reports due on the last day of each month to staff until all rerates and credits have been issued.

ISSUE 3: Should the Commission order Atlantic Telephone Company, Inc. to show cause why a fine of \$10,000 should not be imposed for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. The Commission should order Atlantic to show cause in writing within 21 days of the date of the order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code. Atlantic's response must contain specific allegations of fact or law. If Atlantic fails to respond to the show cause order, the fines should be deemed assessed. If the fine is not paid within ten business days after the Order becomes final, it should be forwarded to the Office of the Comptroller for collection. If the fine is paid it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (Biegalski)

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 July 30, 1999, staff sent a letter to Atlantic stating staff's position on Atlantic's statement that it expects payment in full for the services rendered. The letter was signed for and received on August 2, 1999, and although the company did contact staff via telephone and agree not to pursue collection of the monies due the company, the information was never provided in writing as requested by staff.

Accordingly, staff recommends that the Commission order Atlantic to show cause in writing within 21 days of the date of the order why it should not be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code. Atlantic's response must contain specific allegations of fact or law. If Atlantic fails to respond in writing to the show cause order, the fines should be deemed assessed. If the fine is not paid within ten business days after the Order becomes final, it should be forwarded to the Office of the Comptroller for collection. If the fine is paid it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 4: Should the Commission order Atlantic Telephone Company, Inc. to show cause why a fine of \$500 should not be imposed for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies

RECOMMENDATION: Yes. The Commission should order Atlantic to show cause in writing within 21 days of the date of the order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code. Atlantic's response must contain specific allegations of fact or law. If Atlantic fails to respond to the show cause order, the fines should be deemed assessed. If the fines and regulatory assessment fees, along with statutory penalties and interest, are not paid within ten business days after the Order becomes final, it should be forwarded to the Office of the Comptroller for collection. If the fine is paid it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.
(Biegalski)

DOCKET NO. 991305-11
DATE: October 7, 1999

STAFF ANALYSIS: Rule 25-4.0161, Florida Administrative Code, requires the payment of regulatory assessment fees by January 30 of the subsequent year for telecommunications companies, and provides for penalties and interest as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

The Division of Administration mailed the regulatory assessment fee forms on December 10, 1998. In addition, delinquent notices were mailed on March 17, 1999. To date, the delinquent regulatory assessment fees, including statutory penalties and interest, have not been paid. Therefore, it appears as though Atlantic has failed to comply with Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

Accordingly, staff recommends that the Commission order Atlantic to show cause in writing within 21 days of the date of the order why it should not be fined \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code. Atlantic's response must contain specific allegations of fact or law. If Atlantic fails to respond to the show cause order, the fines should be deemed assessed. If the fines and regulatory assessment fees, along with statutory penalties and interest, are not paid within ten business days after the Order becomes final, it should be forwarded to the Office of the Comptroller for collection. If the fine is paid it will be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

DOCKET NO. 991305-11
DATE: October 7, 1999

ISSUE 5: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, then Atlantic 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 recommendations in Issues 2, 3, and 4 are approved, then Atlantic 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 amounts proposed. If Atlantic timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If Atlantic does not respond to the show cause order, and the fines and fees, including statutory penalties and interest, are not received within ten business days after the expiration of the show cause response period then Atlantic's certificate should be canceled for the violations cited in Issue 1 and the fines in Issues 2, 3 and 4 should be imposed for the violations cited in Issues 2, 3 and 4 and forwarded to the Comptroller's Office for collection. This docket can then be closed. (Watts)

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, then Atlantic 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 recommendations in Issues 2, 3 and 4 are approved, then Atlantic 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 amounts proposed. If Atlantic timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If Atlantic does not respond to the show cause order, and the fines and fees, including statutory penalties and interest, are not received within ten business days after the expiration of the show cause response period then Atlantic's certificate should be canceled for the violations cited in Issue 1 and the fines in Issues 2, 3 and 4 should be imposed for the violations cited in Issues 2, 3 and 4 and forwarded to the Comptroller's Office for collection. This docket can then be closed.

Atlantic Telephone Co., Inc.

Long Distance World Wide

May 14, 1999

Florida Public Service Commission
Ms. Carol Broome
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Dear Carol,

I am contacting you on behalf of Atlantic Telephone Company Inc. as their General Counsel. It was a pleasure speaking with you again last week, and as per our conversation I am responding to the consumer complaint filed by Guardian Security Systems Inc. (Request No. 251242I).

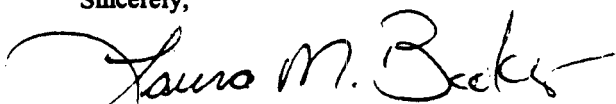
During the last quarter of 1998 Atlantic changed underlying carriers and began the process of moving all of our current customers to our new carrier. In doing so, Atlantic tapped into our customer list and database and switched all of our customers. What we did not know at that time was that the list contained all of our current and past customers. As such, we inadvertently switched all customers, including ones that had been with our company in the past but had since changed long distance companies. As we became aware of the problem, we began to rectify the problem by changing each customer back to his or her carrier of choice, as we became aware of the problem.

Of course some customers report directly to you at the commission before talking with us and we therefore have not corrected the problem by the time the complaint is brought to you. Now that we are aware of the problem with the service to, we will take appropriate measures to ensure that this customer incurs no further charges and that he is properly placed on his carrier of choice.

Atlantic does however, expect payment in full for services rendered. Please feel free to contact me regarding this matter if there is anything further I can do rectify this problem, my number in Tampa is (813) 272-7000.

Thank you for your cooperation and attention to this matter.

Sincerely,



Laura M. Booker, Esq.
General Counsel for Atlantic Telephone Co.



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