

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Telecuba, Inc. for violation of Rule 25-24.470, F.A.C., Certificate of Public Convenience and Necessity Required.

DOCKET NO. 960217-TI

In re: Application for certificate to provide interexchange telecommunications service by World Long Distance, Inc.

DOCKET NO. 960295-TI
ORDER NO. PSC-97-0817-FOF-TI
ISSUED: July 8, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

FINAL ORDER APPROVING SETTLEMENT
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING CERTIFICATE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein concerning certification is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

Telecuba, Inc. (Telecuba) has been a Florida corporation since March 15, 1995. The sole shareholder and president is Luis Coello. Telecuba is a provider of telecommunications services through the

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TELEPHONE REPORTING

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Telecuba is a provider of telecommunications services through the use of prepaid calling cards. Telecuba provided this service by purchasing long distance services from World Access Communications Corporation (World Access), holder of Interexchange Carrier (IXC) Certificate of Public Convenience and Necessity No. 2385.

Telecuba resold World Access' services to end user customers who purchased a debit card that could be used to access an 800 number to place telephone calls. Telecuba or its agents sold the cards to end user customers for a flat fee for a certain amount of minutes of use. Telecuba did not have an IXC certificate giving it authority to resell such intrastate services in Florida. World Access purchased the network time for the 800 access numbers at a wholesale rate from AT&T. World Access thereby had control over the numbers' use and resale to other telecommunications companies and the general public.

In early December, 1995, Mr. Coello contacted our staff several times by telephone regarding his complaint that World Access had disconnected the 800 access numbers that Telecuba was using to provide its prepaid calling service. Telecuba was not able to get World Access to reconnect the numbers and unable to get AT&T to reassign the numbers to Telecuba. Carlos Rodriguez, a World Access representative, communicated to our staff that Telecuba was disconnected because of its failure to fulfill its business obligations. As a result, end users who had purchased debit cards were not able to complete telephone calls and receive the telephone service for which they had already paid. The companies have been unable to resolve their differences.

By Order No. PSC-96-0630-FOF-TI, issued May 10, 1996, we initiated proceedings to require Telecuba to show cause why we should not fine Telecuba for violation of Rule 25-24.470, Florida Administrative Code, certificate of public convenience and necessity required. We also ordered Telecuba to show cause why it should not make refunds to customers for each debit card sold equal to the amount of purchase or equal to unused long distance service. Further, we ordered Telecuba to show cause why it should not run a notice in the local media in the area where the cards were sold stating how refunds may be obtained. On May 30, 1996, Telecuba filed its Answer to Order to Show Cause and Petition for Formal Proceeding, and the matter was set for hearing on May 28, 1997.

On May 8, 1997, Telecuba submitted a written proposal to us to contribute \$7,000 to the State of Florida General Revenue Fund in

lieu of our continuing the show cause proceeding. (Attachment A). Telecuba also agreed to provide us with the documentation requested in Staff's First Set of Requests for Production of Documents, including documentation supporting any refund Telecuba had provided to its customers possessing non-working debit cards. Finally, Telecuba's proposal requests that we promptly process the application of Mr. Coello's corporation, World Long Distance, Inc., for authority to provide intrastate IXC service in Florida. Our staff has previously withheld processing this application due to the pending show cause proceeding against Mr. Coello's company, Telecuba. This Order addresses Telecuba's settlement proposal and the World Long Distance IXC certificate application.

II. RESOLUTION OF SHOW CAUSE PROCEEDING

Telecuba has cooperated with our staff in an effort to resolve the areas in dispute and to refund the affected customers. In the Direct Testimony of Mr. Coello and Telecuba's Responses to Staff's Request for Production of Documents, Telecuba has provided us with written verification that it has made a refund of \$12,055.00 to its customers who had non-working debit cards. World Access has provided a call detail records summary that shows the total amount of unused time on the Telecuba cards. This information indicates a credit balance of \$5,994.20 remaining on the non-working Telecuba cards. (Attachment B). Telecuba also has provided written verification of its placement of an advertisement in the local media in the area where the cards were sold indicating how customers who possess non-working cards can obtain a refund. Telecuba has provided similar information to merchants who sold the Telecuba cards in order to notify the affected customers.

In Telecuba's proposed settlement (Attachment A), the company offered to pay a \$7,000 contribution into the State of Florida General Revenue Fund and to verify in writing its refund to the affected customers. In previous dockets involving companies operating without a certificate, fines and settlements have ranged up to \$40,714. In this case, a \$7,000 contribution appears reasonable. Telecuba has cooperated with us, refunded the affected customers, and intends to comply with all of our rules and orders in the future. Many of the cases where greater fines were levied or higher settlements were proposed involved companies that could not be located and did not respond to our staff's inquiries. Therefore, we believe that the settlement proposal of a \$7,000 contribution is appropriate.

Telecuba's proposal also explained why we should not require Telecuba, as it presently operates, to obtain an IXC certificate. We believe that Telecuba presently operates purely as a marketer and distributor of the debit cards and not as a reseller of telecommunications services. Therefore, we do not believe that we should require Telecuba to obtain an IXC certificate.

Accordingly, we accept the settlement proposal of Telecuba in resolution of the show cause proceeding. Upon our receipt, we shall forward the \$7,000 payment to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. Telecuba shall remit the \$7,000 contribution and provide written verification of a refund to the affected customers within 30 days of the date this Order becomes final.

Docket No. 960217-TI shall be closed upon our receipt of Telecuba's contribution of \$7,000 to the General Revenue Fund and written verification of a refund to the affected customers within 30 days of the date the provisions of this Order approving Telecuba's settlement proposal become final.

III. WORLD LONG DISTANCE, INC.'s IXC CERTIFICATE APPLICATION

Section 364.337(3), Florida Statutes, provides:

The commission shall grant a certificate of authority to provide intrastate interexchange telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area to be served.

World Long Distance filed an application with this Commission on March 6, 1996, to offer interexchange telecommunications service as a reseller in Florida. The information contained therein demonstrates that the company has sufficient managerial and technical capabilities in the provision of telecommunications service. The information also demonstrates that the company has adequate financial capability in accordance with the requirements of Section 364.337(3), Florida Statutes.

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Therefore, we find it appropriate to grant World Long Distance Florida Public Service Commission Certificate No. 4459 to provide interexchange telecommunications service.

Docket No. 960295-TI shall be closed, unless a person whose substantial interests are affected by our Proposed Agency Action granting World Long Distance an IXC certificate files a protest within 21 days of the issuance date of this Order.

If this Order becomes final and effective, it will serve as World Long Distance's IXC certificate. Therefore, it should be retained by World Long Distance as proof of certification.

Interexchange carriers (IXCs) are subject to Chapter 25-24, Florida Administrative Code, Part X, Rules Governing Telephone Service Provided by Interexchange Telephone Companies. IXCs are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapter 25-4, Florida Administrative Code. Further, in accordance with Order No. 16804, issued November 4, 1986, IXCs may not construct facilities to bypass a local exchange company without the prior approval of this Commission.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement proposed by Telecuba, Inc. in resolution of this show cause proceeding, which is attached to this Order as Attachment A and is incorporated herein by reference, is hereby approved. It is further

ORDERED that Docket No. 960217-TI shall be closed upon our receipt of Telecuba, Inc.'s contribution of \$7,000 to the General Revenue Fund and written verification of a refund to its affected customers within 30 days of the date the provisions of this Order approving the settlement proposal of Telecuba, Inc. become final. It is further

ORDERED that World Long Distance, Inc. is granted a certificate to provide interexchange telecommunications service, subject to the terms and conditions stated in the body of this Order. It is further

ORDERED that this Order shall serve as World Long Distance, Inc.'s certificate and should, therefore, be retained as proof of certification. It is further

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ORDERED that the provision of this Order approving World Long Distance, Inc.'s application for a certificate to provide intrastate interexchange telecommunications services is issued as a proposed agency action and shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event the provision of this Order approving World Long Distance, Inc.'s application becomes final, Docket No. 960295-TI shall be closed.

By ORDER of the Florida Public Service Commission, this 8th day of July, 1997.



BLANCA S. BAYO, Director
Division of Records and Reporting

(S E A L)

WPC

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.

As identified in the body of this order, our action granting World Long Distance, Inc. a certificate is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 29, 1997. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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

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completed within thirty (30) days of the effective date 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.

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 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 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.

05/08/97 THU 17:08 FAX 202 667 8543

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May 8, 1997

* MD BAR ONLY
** PA BAR ONLY
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**** EB BAR ONLY

VIA FAX AND VIA OVERNIGHT MAIL

William Cox, Esq.
Staff Counsel
Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 960217-In re initiation of show cause proceedings
against Telecuba, Inc. for violation of Rule 25-24.470 F.A.C.,
Certificate of Public Convenience and Necessity Required

Dear Mr. Cox:

Pursuant to our telephone discussion earlier today, here is Telecuba, Inc.'s proposal for settling the above-captioned show cause proceeding. The terms of the settlement proposal are as follows:

1. Telecuba will make a voluntary contribution in the amount of seven thousand dollars (\$7,000.00) to the Treasury of the State of Florida;
2. The order to show cause will be dismissed and the proceeding will be terminated without any finding being made as to whether Telecuba violated any provision of Florida law or any regulation of the PSC, and without Telecuba admitting to any such violation;
3. The application of World Long Distance, Inc. for authority to provide intrastate telecommunications service in Florida (Docket No. 960295-TI, filed March 6, 1996) will be promptly processed by the PSC Staff and staff will recommend to the Commission that the application be granted upon completion of processing and a determination that World Long Distance is qualified to be awarded authority to provide intrastate service.

05/08/97 THU 17:09 FAX 202 667 8543

FLEISCHMAN & WALSH LLP

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William Cox, Esq.
May 8, 1997
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During our telephone conversation, you asked for a factual explanation as to why it would not be necessary for Telecuba to be an authorized telecommunications company. As you are aware, both Telecuba and World Long Distance are owned by Mr. Luis Coello. Telecuba was established as a company which markets and distributes prepaid calling cards. World Long Distance was established to be a provider of telecommunications services, i.e., an interexchange carrier. Telecuba calling cards entitle cardholders to specified amounts of calling time using World Long Distance service. World Long Distance sets the price for the calls, files and maintains the tariffs with the Federal Communications Commission and (upon authorization by the PSC) with the PSC setting forth the rates, terms and conditions of service; provides customer service, and holds itself out to the public as the provider of telecommunications service. World Long Distance operates and maintains a network comprised of leased facilities and resold services. World Long Distance, not Telecuba, acquires telecommunications service capacity from underlying vendors. Moreover, World Long Distance plans to provide telecommunications services to customers other than holders of Telecuba calling cards. In this regard, it will provide telecommunications service for use with other prepaid calling cards, including cards issued by companies not affiliated with Mr. Coello.

I hope that you will agree that the above proposal represents a fair resolution of the Telecuba matter which will obviate the need for time-consuming and costly litigation. I look forward to discussing this proposal with you and your colleagues.

Sincerely,



Mitchell P. Brecher

MAY-13-97 16:23 FROM KATZ KUTTER HAIGLER ID:8842241247 PAGE 2/3
MAY-13-97 TUE 12:27 ID:WORLD ACCESS COMM CO TEL NO:305 577-9774 #584 P42

AFFIDAVIT OF CARLOS A. RODRIGUEZ

STATE OF FLORIDA)
) SE:
COUNTY OF DADE)

I, Carlos A. Rodriguez, do hereby confirm, depose and say that:

I am an individual in excess of 21 years and make this statement of my free will and volition. I work for World Access Communications Corp., 1101 Brickell Avenue, Suite 200, Miami, Florida 33131.

On May 13, 1997, acting on the instructions of Joel Esquenazi, President of WACC, I caused to be made an analysis of the telephone records available to me relating to the sale of pre-paid telephone cards by TeleCuba.

The records reviewed consisted of four volumes of records covering approximately 8434 Telecuba prepaid cards. Of these cards, 6627 or 78% had been completely used. Further, an additional 1285 cards or an additional 15% of these cards had less than \$2.00 in value remaining. The total value of all of the remaining cards of which WACC has records is \$5994.20.

A complete analysis of the records available to me is attached hereto as Exhibit 1.



Carlos A. Rodriguez

BEFORE ME, the undersigned authority, on May 14 1997, personally appeared Carlos A. Rodriguez, who produced like's as identification, who after first being duly sworn, deposes and says that he has read the foregoing and that same is true and accurate to the best of his knowledge and belief.


OFFICIAL SEAL
JAMES R. TUCKER
Notary Public
State of Florida at Large
My Commission Expires: 05/15/98

MAY-13-97 16:24 FROM KATZ KUTTER HAIGLER
 MAY-13-'97 TUE 12:29 ID:WORLD ACCESS COMM CO TEL NO: 305 577-9774

ID: B042241247

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#584 P83

VOLUME 1
Number of Cards Outstanding by Card Value

Total Cards	\$0.00 Value (used up)	\$0-\$1.00	\$1.00-\$2.00	\$2.00-\$5.00	\$5.00- \$10.00	\$10.00- \$20.00	\$20.00 and up	\$ Total Remaining
2470	1797	282	210	71	43	60	7	2117.50

VOLUME 2
Number of Cards Outstanding by Card Value

Total Cards	\$0.00 Value (used up)	\$0-\$1.00	\$1.00-\$2.00	\$2.00-\$5.00	\$5.00- \$10.00	\$10.00- \$20.00	\$20.00 and up	\$ Total Remaining
2996	2581	168	128	37	36	41	5	1391.67

VOLUME 3
Number of Cards Outstanding by Card Value

Total Cards	\$0.00 Value (used up)	\$0-\$1.00	\$1.00-\$2.00	\$2.00-\$5.00	\$5.00- \$10.00	\$10.00- \$20.00	\$20.00 and up	\$ Total Remaining
1581	1174	171	105	56	28	39	8	\$1511.99

VOLUME 4
Number of Cards Outstanding by Card Value

Total Cards	\$0.00 Value (used up)	\$0-\$1.00	\$1.00-\$2.00	\$2.00-\$5.00	\$5.00- \$10.00	\$10.00- \$20.00	\$20.00 and up	\$ Total Remaining
1987	1075	153	88	41	17	30	3	\$973.44