

FLORIDA PUBLIC SERVICE COMMISSION
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Tallahassee, Florida 32399-0850

MEMORANDUM

MARCH 6, 1997

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

FROM: DIVISION OF COMMUNICATIONS (ISLER) *PJC*
DIVISION OF LEGAL SERVICES (BROWN) *MCB*
DIVISION OF CONSUMER AFFAIRS (DURBIN) *DT*

RE: DOCKET NO. 960841-TI - LDM SYSTEMS, INC. - INITIATION OF
SHOW CAUSE PROCEEDINGS FOR VIOLATION OF RULE 25-4.118,
FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER
SELECTION

AGENDA: MARCH 18, 1997 - REGULAR AGENDA -
- INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\960841TI.RCM

CASE BACKGROUND

LDM Systems, Inc. (LDM), is a provider of interexchange telecommunications service and was certificated on November 21, 1992. Between January 1, 1995, and June 21, 1996, Consumer Affairs staff received 163 complaints against LDM for unauthorized carrier changes (slamming).

On October 21, 1996, the Commission issued Order No. PSC-96-1297-FOF-TI initiating show cause proceedings against LDM for violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection. On November 19, 1996, the Commission issued Order No. PSC-96-1380-PCO-TI granting LDM's motion for an extension of time to respond to the Commission's Order to show cause. During that time, LDM contacted staff and advised of its intentions to issue a proposed settlement offer. On January 29, 1997, LDM filed its proposed settlement offer (Attachment A). This is staff's recommendation to accept the proposed settlement offer.

DOCUMENT NUMBER-DATE

02444 MAR-97

FPSC-RECORDS/REPORTING

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement proposed by LDM Systems, Inc. as resolution of the apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection?

RECOMMENDATION: Yes. The Commission should accept LDM Systems, Inc.'s settlement offer and require the company to file a report with staff within 45 days of the date of issuance of the Commission's Order, which describes the company's review of outstanding complaints and any refunds or adjustments made.

STAFF ANALYSIS: The Division of Consumer Affairs received a total of 163 slamming complaints against LDM in an 18-month period. The majority of all complaints (152 out of 163) dealt with telemarketing. In every case, the consumers advised the Commission that they did not know their long distance service would be switched to another carrier.

The Commission issued Order No. PSC-96-1297-FOF-TI on October 21, 1996, requiring the company to show cause why it should not be fined or have its certificate cancelled for violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection.

LDM Systems, Inc.'s proposed settlement offer (Attachment A) can be summarized as follows.

- LDM will review all pending unresolved complaints and make adjustments, including refunds, as are necessary.

- LDM will review and revise its internal operating policies to insure it timely replies to Commission inquiries.

- LDM will modify its telemarketing scripts to make it clear to the consumer that its independent verification company is not affiliated with LDM.

- LDM will contribute \$30,000 to the Commission for deposit in the general revenue fund of the State of Florida within 30 days after the Commission order accepting this settlement becomes final.

- LDM will continue to comply with Commission rules and regulations.

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Concerning the first and second conditions listed above, we believe that LDM should be required to file a report with staff within 45 days of the date of issuance of the Commission's Order, which describes the company's review of outstanding complaints and any refunds or adjustments made. With the addition of the report, staff believes the settlement offer proposed by LDM adequately addresses the slamming complaints. However, if the Commission staff fails to see an improvement in the number of complaints, we plan to open a separate docket to address them. Therefore, staff believes the \$30,000 contribution LDM has agreed to pay should be accepted and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285 (1), Florida Statutes. This amount is reasonable and consistent with settlement payments made by other long distance carriers in resolution of slamming activities.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed with the approval of Issue 1, remittance of the \$30,000 contribution for deposit in the General Revenue Fund of the State of Florida, and receipt of LDM's report to staff within 45 days of the date of issuance of the Commission's Order.

STAFF ANALYSIS: If the Commission accepts staff's recommendation in Issue 1, upon remittance of the \$30,000 settlement by LDM, and receipt of the company's report to staff, this docket may be closed.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)
proceedings against LDM Systems, Inc.) Docket No. 960841-T1
for violation of Rule 25-4.118, F.A.C.,) Filed: January 29, 1997
Interexchange Carrier Selection)

RESPONSE AND OFFER OF SETTLEMENT

LDM Systems, Inc. (LDM), herewith submits its response and offer of settlement of all outstanding unauthorized PIC change allegations filed with the Commission in order to resolve the show cause order and to avoid the attendant costs and expenses of protracted litigation.

1. On October 21, 1996, the Commission issued order No. PSC-96-1297-FOF-T1 directing LDM to respond to a show cause with respect to unauthorized PIC changes. LDM has been certificated and operating in Florida since 1992 and prior to December 1995, PSC reports reflect no complaint activity with respect to LDM. In the instant case, LDM terminated its arrangements with the contractor which led to the majority of consumer complaints prior to the issuance of the show cause order. Similarly, LDM ceased telemarketing in the state prior to issuance of the order and is not currently telemarketing in Florida and recent Commission reports reflect no new complaint activity. Further, LDM has reviewed consumer correspondence and has refunded in excess of \$15,000 to customers.

2. LDM does not believe that the company has refused to comply with any rule or order of this Commission nor has there been a willful violation of any rule or order. LDM believes that it could demonstrate compliance with the rules of this Commission; however, to do so requires an expensive, protracted proceeding. To avoid such a protracted proceeding, LDM offers the following by way of settlement of this case, in addition to those actions taken prior to this time.

- a. LDM will review all pending unresolved consumer requests and make such adjustments, including refunds, as are necessary;
- b. LDM will review and revise its internal operating policies to insure that the Commission receives timely responses to any future consumer inquiry;
- c. LDM has stated its intent to resume telemarketing in Florida and has submitted proposed scripts. LDM will modify this script so that it is clear to the customer that verification of a change order is performed by an independent verification company that is not affiliated with LDM;
- d. LDM will make a contribution to the general revenue fund of the State of Florida of \$30,000, with no admission of any liability or wrongdoing. The voluntary contribution will be made not later than 30 days after the Commission order accepting this settlement becomes final;
- e. LDM will continue to comply with the rules and regulations of the FPSC.

Based on the foregoing, LDM Systems, Inc. requests the Commission to enter its order accepting the offer of settlement.

Respectfully submitted,



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