

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 980675-TI
ORDER NO. PSC-99-1389-AS-TI
ISSUED: July 19, 1999

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER APPROVING SETTLEMENT OFFER

BY THE COMMISSION:

On August 12, 1998, by Order No. PSC-98-1090-SC-TI in this docket, the Commission ordered Cendant Membership Services, Inc. (Cendant) to show cause in writing within 21 days of the issuance of the Order why it should not be fined \$25,000 for its apparent violations of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. Cendant was providing intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. On May 19, 1999, Cendant filed a settlement offer as resolution to this docket. The offer is attached to this Order as Attachment A and is by reference incorporated herein.

In its settlement offer, Cendant agreed to apply for an interexchange certificate and refund with interest, any charges imposed in connection with intrastate services provided by Cendant prior to Cendant, Inc.'s certification in Florida, by making a voluntary contribution to the State of Florida General Revenue Fund. In addition, Cendant agreed to pay a \$25,000 penalty for operating in Florida without a certificate. Cendant also agreed that in the event that any additional customers make a complaint about services rendered during the relevant period, Cendant will issue those customers a full credit.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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According to Cendant, because it was offering calling card services, Cendant was unable to distinguish the total charges for intrastate calls from charges for interstate calls for individual refunds to Florida customers. Neither Cendant's billing clearinghouse nor its underlying carrier was able to calculate either customer-specific or Florida-specific billing information. Without Florida consumer specific information, Cendant was unable to identify individual customers eligible for refunds. Based on nationwide and regional data Cendant was able to collect, Cendant was able to calculate a reasonably accurate estimate of the total intrastate calling card charges and monthly fees billed to consumers in Florida without authorization since August 1997. Approximately 12% of Cendant's nationwide calling card billing during this period is attributable to the Southeastern Region and this totals \$12,132.72. Although, total Florida billings would be a percentage of that amount, Cendant is willing to pay the entire amount, plus interest, in order to expedite resolution of this proceeding. The 30-day commercial paper interest rate (4.84%) accumulated on the overcharges identified by Cendant is \$932.26. As previously stated, Cendant has also offered to remit a \$25,000 voluntary contribution in lieu of a fine. Thus, the total amount Cendant has agreed to pay is \$38,064.98. When received, this amount will be forwarded by this Commission, to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

Upon consideration of the settlement offer, we find that Cendant has satisfactorily addressed each of our concerns and has been cooperative in resolving all issues. The settlement is adequate to compensate for the harm to Florida consumers and, therefore, we hereby approve the settlement offer proposed by Cendant.

Based on the foregoing, it is

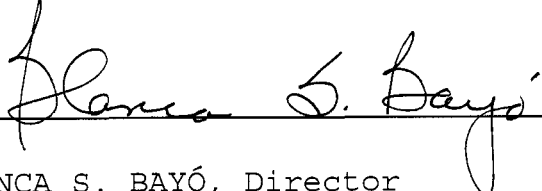
ORDERED by the Florida Public Service Commission that the settlement offer by Cendant Membership Services, Inc., attached to this Order as Attachment A and by reference incorporated herein, is approved. It is further

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ORDERED that Cendant Membership Services, Inc. shall remit a \$25,000 contribution plus an overcharge refund of \$13,064.98 within 10 business days from the issuance date of this Order. This settlement total of \$38,064.98 will be forwarded by the Commission to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. It is further

ORDERED that upon remittance of the settlement payment, this docket shall be closed. If Cendant Membership Services, Inc. fails to pay in accordance with the terms of its settlement offer, its certificate should be canceled administratively with an effective date 5 days after the settlement payment was due.

By ORDER of the Florida Public Service Commission this 19th day of July, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DWC

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

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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.

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PAGE 5

ATTACHMENT A

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19TH STREET, N.W.

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MUMBAI, INDIA
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May 19, 1999

FACSIMILE
(202) 955-9792
99 MAY 20 9 25
MAIL ROOM
WRITER'S DIRECT LINE
(202) 955-9778
WRITER'S E-MAIL
kdw@kelleydrye.com

BY FACSIMILE AND FEDERAL EXPRESS

Ms. Toni McCoy
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **Cendant Membership Services, Inc.**
Docket No. 980675-TI



Dear Ms. McCoy:

As we have discussed, Cendant Membership Services, Inc. ("Cendant") is eager to work with the Florida Public Service Commission ("Commission") to settle and terminate the above-referenced proceeding. Specifically, Cendant is agreeable, as set forth in the Order to Show Cause issued on August 12, 1998, to (1) pay in full the fine of \$25,000, and (2) participate in a plan to refund to Florida customers charges imposed in connection with intrastate services provided by Cendant prior to CendantCom, Inc.'s ("CendantCom") certification in Florida, with interest. On January 11, 1999 CendantCom was certificated by the Commission to provide intrastate interexchange services in Florida in Docket No. 981107-TI; CendantCom's authorization became final on February 2, 1999. No other Cendant affiliate is providing intrastate telecommunications services in Florida.

As you know, with regard to calculating the refunds to be made to Florida customers, Cendant has investigated and reviewed relevant data to determine the total amount of intrastate calling card billings and associated monthly fees assessed in Florida during the relevant time period. Cendant has explained the difficulty it has experienced in its attempts to distinguish the total charges for intrastate calls from charges for interstate calls for each Florida customer, a task which required certain information from Cendant's underlying carrier and billing clearinghouse. That task has now proven to be virtually impossible, as have Cendant's efforts to gather even Florida-specific data. Unfortunately, neither MCI (Cendant's underlying carrier) nor

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KELLEY DRYE & WARREN LLP

Ms. Toni McCoy
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International Telemedia Associates ("ITA") (Cendant's billing clearinghouse), was able to provide information sufficient to enable Cendant to calculate customer-specific refunds. ITA has ceased doing business, and no longer exists as a business entity; accordingly, Cendant was not able to receive *any* relevant information from that source. Although MCI was slightly more helpful, MCI is unable to produce a report which details Florida-specific call records. Without either customer-specific or Florida-specific billing information, Cendant is totally without the means to calculate an accurate refund per-customer in Florida.

However, based on the nationwide and regional data that Cendant was able to collect, Cendant can calculate a reasonably accurate estimate of total intrastate calling card charges and monthly fees billed by Cendant in Florida without authorization since August 1997. Cendant notes that during the relevant period, at least 50 percent of all intrastate calling card charges and monthly fees billed were credited back to consumers, both by Cendant customer service and the relevant local exchange carriers. Of the remaining total billed nationally by Cendant, approximately 12 percent of Cendant's nationwide calling card billings during that period are attributable to the Southeastern Region -- this totals \$12,132.72. Although total Florida billings would be a percentage of that amount, Cendant is willing to pay the Commission the entire \$12,132.72 in order to expedite the resolution of this proceeding, which amount the Commission may then distribute to consumers as the Commission deems suitable. Cendant believes that this sum and payment plan would result in appropriate restitution for all affected Florida consumers, and would be commensurate with any harm consumers may have suffered. Based on conversations with staff, Cendant understands that the total amount of interest to be paid in connection with the refund amount is \$932.26. Accordingly, Cendant will pay a total amount of \$13,064.98 into the General Revenue Fund for distribution to affected customers.

In addition, in the event that any additional customers make a complaint about services rendered during the relevant period, Cendant will issue those customers a full credit.

We hope that the Commission will find this settlement proposal to be acceptable.

Please do not hesitate to contact me if you have any questions regarding Cendant's offer, or if you would like any additional information:

Very truly yours,



Rebekah J. Kinnett
Counsel for Cendant Membership Services, Inc.

KELLEY DRYE & WARREN LLP

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MANILA, THE PHILIPPINES

MUMBAI, INDIA

TOKYO, JAPAN

BY FEDERAL EXPRESS

Ms. Blanca Bayo

Director

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

Re: Cendant Membership Services, Inc.
Docket No. 980675-TI

Dear Ms. Bayo:

Enclosed please find a check in the amount of thirty-eight thousand and sixty-four dollars and ninety-eight cents, (\$38,064.98) as full settlement in the above-referenced proceeding. This includes the agreed upon total of all Cendant's calling card billings during the period and attributable to the Southeastern Region, plus interest, and the civil forfeiture as discussed.

For our records, please sign this letter where indicated below and return it to us in the enclosed envelope to attest to receipt by the Commission of this full settlement amount.

RECEIVED
FLORIDA PUBLIC
SERVICE COMMISSION
99 AUG 24 AM 10:56
MAIL ROOM
(202) 955-9792

ORIGINAL


DIRECT LINE (202) 955-9776
E-MAIL: rkinnett@kelleydrye.com

August 23, 1999

Eva Samaan
Toni McCoy
R+R

FA
PP
AF
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JPC
PAI
SEC
WAW
OTH

DOCUMENT NUMBER - DATE
10080 AUG 24 99
FPC RECORDS/REPORTING

KELLEY DRYE & WARREN LLP 101 Park Avenue New York, NY 10178 (212) 808-7800		CHASE MANHATTAN BANK NEW YORK, NY 10036 1-2/210		404400
PAY Thirty-eight thousand sixty-four and 98/100		DATE August 11, 1999		AMOUNT \$38,064.98
Florida Public Service Commission				
THE ORDER OF				
				

RECEIVED-EPSC
MEMORANDUM

RECEIVED-FPSC

JUL 19 1998 2:08

JUL 19 PM 12:10

RECORDS AND
REPORTING

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CALDWELL) *DWC*

RE: DOCKET NO. 980675-TI - INITIATION OF SHOW CAUSE
PROCEEDINGS AGAINST CENDANT MEMBERSHIP SERVICES, INC. FOR
VIOLATION OF RULE 25-24.470, F.A.C., CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY REQUIRED.

1389-AS

Attached is an ORDER APPROVING SETTLEMENT issued in the above-referenced docket. (Number of pages in order - 4)

DWC/anc
Attachment
cc: Division of Communications
I: 980675.dwc

4:25

attach's not online

*R-mailed
RAR.*

Requisition for Photocopying and Mailing

Date 7, 21, 99

Number of Originals _____

Copies Per Original 19

Requested By [Signature]

Item Presented _____

Agenda For (Date) _____

Order No. 99-1369

In Docket No. 8267

Notice of _____

For (Date) _____

In Docket No. _____

Other _____

Special Handling Instructions _____

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Number

Distributed/Mailed To

Commission Offices

Docket Mailing List - Mailed

Docket Mailing List - Faxed

Number

Distribution/Mailed To

Note: Items must be mailed and/or returned within one working day after issue unless specified here.

Print Shop Verification

Job Number 215

Verified By [Signature]

Date and Time Completed 7-21

Job Checked For Correctness and Quality (Initial) _____

Mail Room Verification

Date Mailed _____

Verified By _____