

REVISED

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MAB for WOT

State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

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01 AUG 23 AM 11:30
COMMISSION CLERK

DATE: AUGUST 23, 2001

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (BANKS) *plz for*
DIVISION OF COMPETITIVE SERVICES (BUYS) *DRB*

RE: DOCKET NO. 010245-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST OLS, INC. FOR APPARENT VIOLATIONS OF RULE 25-4.118, F.A.C., LOCAL, LOCAL TOLL, OR TOLL PROVIDER SELECTION, AND FINE ASSESSMENT FOR VIOLATION OF RULE 25-4.0161, F.A.C., REGULATORY ASSESSMENT FEES; TELECOMMUNICATIONS COMPANIES.

AGENDA: 09/04/01 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\010245.RCM

CASE BACKGROUND

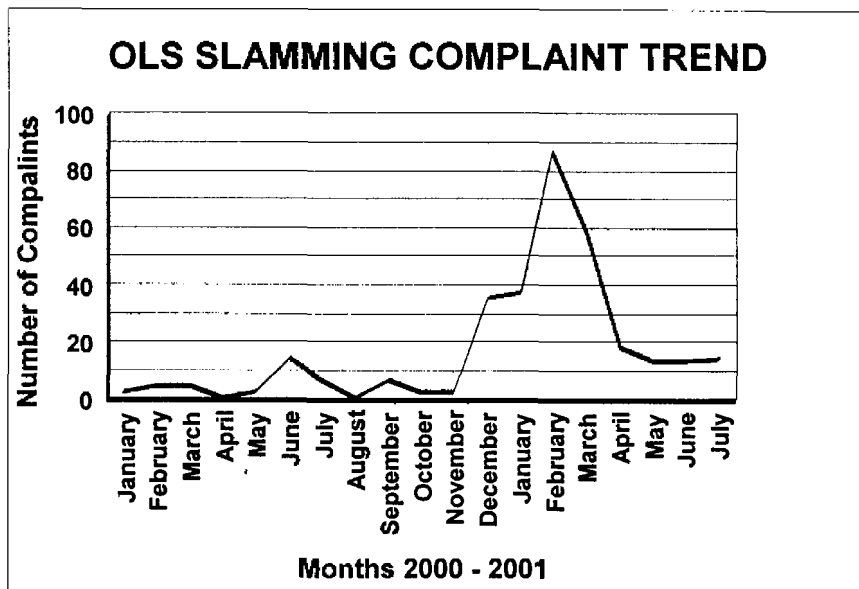
- October 7, 1997 - OLS, Inc. (OLS) was granted Certificate No. 5224 to provide interexchange telecommunications services within the State of Florida.
- September 28, 2000 - Staff determined there were twenty-two (22) complaints filed with the Florida Public Service Commission (Commission) against OLS that have been closed as apparent unauthorized carrier change (slamming) infractions.

DOCUMENT NUMBER-DATE

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- October 11, 2000, through December 7, 2000 - Staff sent three letters to OLS requesting that the company investigate the apparent slamming violations and provide staff with a reply explaining the reason for the slamming complaints and detailing the company's plan to eliminate slamming instances in the future. In its responses, the company attributed the reason for the slamming instances to its telemarketing firm and provided staff with its plan to reduce the number of slamming complaints and indicated that the slamming instances should cease.
- February 19, 2001 - Staff opened this docket to initiate show cause proceedings against OLS based on the significant increase in slamming complaints against OLS that were received by the Commission since December 01, 2000. The increase in complaints occurred after OLS indicated to staff that it had taken the appropriate actions to correct the problems causing the slamming complaints. However, instead of decreasing, the number of complaints increased as illustrated by the following chart.



- March 9, 2001 - As of this date, the Commission had received 282 complaints since July 15, 1999, that were initially categorized as slamming. Staff closed 49 of those complaints as apparent rule violations.

- March 15, 2001 - OLS filed its Regulatory Assessments Fees for calendar year 2000 and reported intrastate operating revenue of \$358,232.59, for the period of January 1, 2000, through December 31, 2000.
- March 22, 2001 - Staff filed its recommendation for the April 03, 2001 Agenda Conference in which it recommended that the Commission order OLS to show cause why it should not be fined for 49 apparent slamming violations.
- March 29, 2001 - On behalf of OLS, Paul A. Dean, Regulatory Counsel, The Helein Law Group, P.C., requested and was granted a deferral from the April 03, 2001, Agenda Conference.
- March 30, 2001 through July 13, 2001 - Staff and OLS' legal counsel were involved in ongoing negotiations which resulted in a proposed settlement to resolve the show cause issues. OLS submitted its revised settlement proposal on July 13, 2001. (Attachment A)

The Florida Public Service Commission is vested with jurisdiction over these matters pursuant to Sections 364.285, 364.336, and 364.603, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept OLS' revised settlement proposal, dated July 13, 2001, to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Local, Local Toll, or Toll Provider Selection?

RECOMMENDATION: Yes. The Commission should accept OLS' revised settlement proposal, which includes a voluntary payment of \$51,000 to the State of Florida General Revenue Fund. The payment should be made in six equal monthly intervals in the amount of \$8,500 each. The first payment should be received within 30 days from the issuance date of the Commission's Final Order and should identify the docket number and company name. Each subsequent payment should be due within 30 day intervals following the first payment and should also identify the docket number and company name. The Commission should forward the payments to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If OLS fails to pay in accordance with the terms of its settlement offer, Certificate No. 5224 should be canceled and this docket should be closed. OLS has waived any objection to the administrative cancellation of its certificate should it fail to pay in accordance with its settlement offer. If however, there is a factual dispute as to the manner of level of compliance with any other provision in the settlement, staff will bring the matter to the Commission for consideration and will allow OLS an opportunity to be heard on the matter. **(Banks, Buys)**

STAFF ANALYSIS: On May 21, 2001, staff hosted a meeting with the principals of OLS (Gary and Geri Eubanks) and their counsel to discuss the slamming complaints and a possible resolution to the show cause docket. As a result of those discussions, staff agreed to eliminate 15 complaints that were questionable and limit the show cause to 34 complaints. Subsequently, the company submitted its settlement proposal. In its settlement proposal, OLS has offered to do the following:

1. Make a voluntary payment of \$1,500 for 34 complaints, for a total of \$51,000 to the State of Florida General Revenue Fund.
2. Make the payment of \$51,000 in six equal monthly installments (\$8,500) with the first payment due within 30 days of the Commission's Final Order approving the settlement,

followed by five monthly payments, with 30 day intervals, of \$8,500 each.

3. Suspend its marketing in the state of Florida for six months commencing on the date of the Commission's Final Order approving OLS' settlement offer.
4. Settle all outstanding complaints logged against it no later than 30 days after the date of the Commission's final order.
5. Establish a warm line transfer between the Commission and OLS that will be finalized and operational within 120 days of the Commission's final order.
6. In conjunction with its sixth and final payment, provide the Commission with a complete report detailing its compliance with the terms and conditions of its settlement agreement.
7. Waive any objection to the administrative cancellation of its certificate should it fail to pay in accordance with its settlement offer. If however, there is a factual dispute as to the manner of level of compliance with any other provision in the settlement, staff will bring the matter to the Commission for consideration and will allow OLS an opportunity to be heard on the matter.

Moreover, OLS indicated that most of the reasons for the slamming instances can be attributed to the actions of one of the companies OLS contracted with to provide telemarketing in Florida. Another reason was the fact that the copies of the recorded third party verification process that OLS sent to the Commission's staff did not contain all of the necessary information for verification and/or authorization as required by Rule 25-4.118(2)(C), Florida Administrative Code. OLS has indicated to staff that it has ceased its relationship with the telemarketing company it used and brought its telemarketing "in-house" in an effort to have more control over the telemarketing process. In addition, OLS stated that it has created a monitoring department located at the OLS Corporate office for the purpose of randomly listening to individual telemarketing calls and intends to expand its monitoring to cover third party verification to ensure compliance with Commission Rules. Furthermore, OLS stated that it has directed the third party verification companies it uses to change their procedures to ensure

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that they are in full compliance with Rule 25-4.118, Florida Administrative Code.

As of August 10, 2001, the number of slamming complaints filed against OLS has decreased significantly. Apparently, the recent corrective actions implemented by the company have been effective. Staff believes that by having more control over the telemarketing process, OLS should be able to reduce potential slamming problems in the future.

Further, staff supports OLS' proposal to suspend its marketing in the State of Florida for a period of six months. Also, staff believes that OLS' proposed agreement to settle all outstanding complaints no later than 30 days after the Commission's Final Order and establish a warm line transfer will help ensure that all past and potential future complaints will be responded to and resolved in a timely manner.

OLS has satisfactorily addressed each of staff's concerns and staff supports the terms of the company's proposed settlement agreement.

Based on the foregoing, staff recommends that the Commission accept OLS' revised settlement proposal, which includes a voluntary payment of \$51,000 to the State of Florida General Revenue Fund. The payment should be made in six equal monthly intervals in the amount of \$8,500 each. The first payment should be received within 30 days from the issuance date of the Commission's Final Order and should identify the docket number and company name. Each subsequent payment should be due within 30 day intervals following the first payment and should also identify the docket number and company name. The Commission should forward the payments to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If OLS fails to pay in accordance with the terms of its settlement offer, Certificate No. 5224 should be canceled and this docket should be closed. OLS has waived any objection to the administrative cancellation of its certificate should it fail to pay in accordance with its settlement offer. If, however, there is a factual dispute as to the manner of level of compliance with any other provision in the settlement, staff will bring the matter to the Commission for consideration and will allow OLS an opportunity to be heard on the matter.

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ISSUE 2: Should the Commission fine OLS \$500 for apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies?

RECOMMENDATION: No. (BANKS, BUYS)

STAFF ANALYSIS: During its investigation into the apparent slamming violations by OLS, staff discovered that OLS had not yet paid its Regulatory Assessment Fees (RAF) for the calendar year 2000. Consequently, staff added the violation of Rule 25-4.0161, Florida Administrative Code, to the docket title. However, during the approval and filing process for its first recommendation, staff recognized that the company filed its RAF on March 06, 2001, (which was posted on the system on 3/15/2001) less the late penalty and interest. Subsequently, OLS paid the late payment and interest on March 29, 2001, (posted to the system on 04/10/2001).

OLS has paid its RAF, plus penalty and interest, as required by Rule 25-4.0161, Florida Administrative Code, and therefore, should not be assessed a fine of \$500 for the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 1 is approved, OLS should have 30 days from the issuance of the Commission's final order to remit its first payment of \$8,500. The docket should remain open until OLS remits five subsequent payments of \$8,500 each and provides the Commission with a report demonstrating the company's compliance with its settlement offer in conjunction with its sixth and final payment. Upon remittance of all six of its payments, totaling \$51,000, the settlement of all outstanding complaints within 30 days of the Commission's final order, and the company's demonstration that it has complied with its settlement offer, this docket should be closed administratively. **(BANKS)**

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, OLS should have 30 days from the issuance of the Commission's final order to remit its first payment of \$8,500. The docket should remain open until OLS remits five subsequent payments of \$8,500 each and provides the Commission with a report demonstrating the company's compliance with its settlement offer in conjunction with its sixth and final payment. Upon remittance of all six of its payments, totaling \$51,000, the settlement of all outstanding complaints within 30 days of the Commission's final order, and the company's demonstration that it has complied with its settlement offer, this docket should be closed administratively.

Telecommunications
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Technology
Corporate & Finance
Trademarks
Proprietary Rights
Complex Litigation
General Business Law

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July 13, 2001

Via Overnight Mail and Facsimile

Felicia Banks/Dale Buys
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Revised Settlement Proposal of OLS, Inc.
Docket No. 010245

Felicia, Dale and Staff:

On behalf of OLS, Inc ("OLS"), thank you for the time you took to meet with OLS and to follow up with the settlement of this matter.

Per our discussions, OLS respectfully tenders the following settlement offer to terminate the initiation of show cause proceedings in Docket No. 010245-T1 relating to 49 alleged slamming complaints. OLS makes this offer in the interest of resolving this matter with the Commission amicably and makes no admission of liability.

This is the first time in OLS' history that the Commission has sought to initiate show cause proceedings with respect to OLS operations in Florida. Based on OLS' history and its proven proactive efforts, both internally and with the Commission, to eliminate the likelihood of future complaints, OLS hereby submits the following settlement proposal:

1. OLS will make a voluntary payment of \$1,500 per complaint to the state of Florida general revenue fund for thirty-four (34) complaints involving technical third party verification deficiencies, for a total payment of Fifty-One Thousand Dollars (\$51,000).

2. Given OLS' status as a small, family operated business and the already significant costs OLS has incurred in its internal investigations, in making restitution to the 49 complainants involved in this proceeding in transitioning to "in-house" marketing, OLS proposes to satisfy this obligation with 6 equal monthly payments consistent with the following payment schedule:

- \$8,500 within 30 days from the Commission's Final Order approving this proposal, followed by five (5) monthly payments, within 30-day intervals, of \$8,500 each.

3. OLS agrees to a suspension of its marketing in the State of Florida for a period of six (6) months from the date of the Commission's Final Order approving this proposal. In the meantime, OLS will work with Commission Staff to establish a third party verification script that fully complies with the Commission's requirements and sets forth a clear and conspicuous verification. Additionally, during this time, OLS will work to expand its existing monitoring units to not only cover current telemarketing monitoring, but also third party verification monitoring to ensure compliance with all State and Commission rules and regulations.

4. OLS agrees to respond to all complaints lodged against it that were received before June 29, 2001 by August 1, 2001. Further, OLS agrees to settle all outstanding complaints lodged against it no later than 30 days after the Commission's Final Order approving the proposal.

5. OLS will work with the Commission to establish a warm line transfer between the Commission and OLS' customer service department. The warm line transfer will be finalized and ready for operation within 120 days after the Commission's Final Order approving this proposal.

6. In conjunction with its sixth and final payment, OLS will provide the Commission with a complete report detailing its compliance with the final terms and conditions of this settlement.

7. OLS agrees to waive any objection to the administrative cancellation of its certificate should it fail to pay in accordance with its settlement offer. If, however, there is a factual dispute as to the manner or level of compliance with any other provision in the settlement, staff will bring the matter to the Commission for consideration and will allow OLS an opportunity to be heard on the matter.

8. Per staff request, OLS affirms its intent to abide by the Administrative rules promulgated by the Public Service Commission with respect to its Florida operations. Specifically, OLS recognizes that Florida law requires a response in 15 days and will comply with that time frame when responding to future complaints.

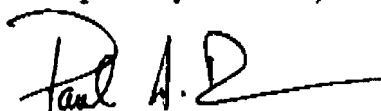
Finally, OLS would like to bring to the Commission's attention that, effective May 25, 2001, OLS will be transitioning from LEC billing to direct billing. Under this billing method,

the customers will receive a direct bill from OLS, including OLS' Customer Service Number and other pertinent information regarding their long distance service. With this new procedure, OLS can provide its customers more efficient and higher quality service.

OLS has already implemented direct billing with its US West customers and has found that the process significantly reduced the number of complaints. However, it has been OLS's experience that the change in billing may initially generate additional inquiries during the first billing cycle. To minimize this possibility, OLS will ensure that all customers are provided with a billing insert explaining the change in billing.

We trust that the above proposal will meet the Commission's approval and we look forward to your response.

Respectfully submitted,



Paul A. Dean
Loubna W. Haddad

Regulatory Counsel to OLS, Inc.