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Public Service Commission

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COMMISSION CLERK

DATE: November 18, 2004

TO: Blanca S. Bayó, Commission Clerk and Administrative Services Director

FROM: Dale R. Buys, Regulatory Analyst II, Division of Competitive Markets & Enforcement *DRB*

RE: Docket No. 041205-TX: Compliance investigation of DSL Internet Corporation d/b/a DSLi for apparent violation of Rules 25-4.082, F.A.C., Number Portability, Rule 25-4.083, F.A.C., Preferred Carrier Freeze, and 25-118, F.A.C., Local, Local Toll, or Toll Provider Selection.

Please file the attached letter signed by Dale R. Buys, dated October 12, 2004, and the facsimile from DSLi Corp, dated October 29, 2004, in the above referenced docket file.

DRB/
Attachments

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH _____

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FPSC-COMMISSION CLERK

STATE OF FLORIDA

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DIVISION OF COMPETITIVE MARKETS &
ENFORCEMENT
BETH W. SALAK
DIRECTOR
(850) 413-6600

Public Service Commission

October 14, 2004

CERTIFIED MAIL
VIA FACSIMILE: (305) 779-4329

Ms. Jessica Pena
General Manager
DSL Internet Corporation d/b/a DSLi
5000 S.W. 75th Avenue, 3rd Floor
Miami, Florida 33155-4468

Re: Compliance Investigation of DSL Internet Corporation d/b/a DSLi for apparent violation of Rule 25-4.082, F.A.C., Number Portability, Rule 25-4.083, F.A.C., Preferred Carrier Freeze, and Rule 25-118, F.A.C., Local, Local Toll, or Toll Provider Selection.Compliance

Dear Ms. Pena:

It has been brought to the attention of the Florida Public Service Commission (Commission) staff that DSL Internet Corporation d/b/a DSLi (DSLi) is apparently imposing local Preferred Carrier (PC) freezes on the accounts of its customers without their authorization. Based on discussions with DSLi and Premier, staff understands that a number of customers presubscribed to Premier Telecom, Inc. (Premier) for long distance service and DSLi for local service, now desire to switch their local service from DSLi to Premier. Premier claims that while operating as an agent for DSLi, DSLi would only provide local service for Premier's customers if a local service PC freeze was imposed. Premier also reported that DSLi is informing customers who request that the local PC freezes be removed so that they may switch from DSLi to Premier, that removal of the local PC freeze will result in the customers losing their telephone numbers.

Placing PC freezes on customers accounts without their authorization and requiring that a PC freeze be a condition of obtaining service are apparent violations of Rule 25-4.083, Florida Administrative Code (F.A.C.), Preferred Carrier Freezes. Refusing to port a working number to an acquiring company is an apparent violation of Rule 25-4.082, F.A.C., Number Portability.

Further, the Commission received two complaints (CATS Request Nos. 622846T & 623176T) regarding slamming by DSLi. The complainants claim that they were customers of US Telecom and are now receiving bills from DSLi. The customers reported that they were

Ms. Jessica Pena
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informed by DSLi that DSLi is now the customers' service provider. In both of those complaints, the customers reported that they did not want DSLi as their local service provider and that DSLi placed PC freezes on their local service without their authorization.

In the week prior to Labor Day, Mr. Frank Johnson of DSLi contacted staff and requested assistance with removing freezes from approximately 600 customers of US Telecom. Mr. Johnson told staff the DSLi had acquired the customer base of US Telecom. It appears that some, if not all, of the 600 US Telecom customers were switched to DSLi. DSLi did not request a waiver of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection, to transfer those customers from US Telecom to DSLi. Nor does it appear that some, if not all, of the customers were notified that their service was being moved to a new provider.

Staff requests that DSLi provide (1) the name and billing telephone number of each customer transferred from US Telecom to DSLi, (2) proof of each customer's authorization for DSLi to switch the customer from US Telecom to DSLi, and (3) proof of each customer's authorization for DSLi to impose a local PC freeze on the customer's service. The authorization should be either a Letter of Agency (LOA) or a recording of a third party verification (TPV).

In addition, staff requests that DSLi provide (1) the name and billing telephone number of each customer obtained through its agency agreement with Premier, (2) a copy of each customer's authorization for DSLi to switch the customer to DSLi, and (3) a copy of each customer's authorization for DSLi to impose a local PC freeze on the customer's service. The authorization should be either a Letter of Agency (LOA) or a recording of a third party verification (TPV).

Please investigate the aforementioned issues and provide staff with a written report detailing the actions DSLi is taking to comply with Commission rules. Please submit the written report and requested information by 5:00 p.m. on **October 28, 2004**. Your reply and proposed resolution to these issues will be handled in Docket No. 041205-TX and will be submitted to the Commission for disposition in a recommendation by staff. Please contact us should you have any questions.

Sincerely,



Dale R. Buys
Regulatory Analyst
Bureau of Service Quality

Tel: (850) 413-6536
Fax: (850) 413-6537
Email: dbuys@psc.state.fl.us

Enclosures

TMS # 1675

5000 SW 75th Av
3rd Floor
Miami, FL 33155

DSL I CORP

Fax

To: Dale Buys	From: Mark Harris
Fax:	Pages: 16 including this one
Phone:	Date: 10/29/2004
Re: Response to your letter of 14 th October CC:	
<input checked="" type="checkbox"/> Urgent <input type="checkbox"/> For Review <input type="checkbox"/> Please Comment <input type="checkbox"/> Please Reply <input type="checkbox"/> Please Recycle	

Dale,

Please find attached DSLi's response to your letter of 14th October to Ms. Jessica Pena.
Should you have any questions please do not hesitate to contact me at 305 779 5707.

Regards,

Mark Harris
CFO DSLi Corp.

Please be informed that the information contained herein is privileged and confidential. Information contained within the documents may not in any way be released without the prior consent of an authorized agent of DSLi. This fax is intended for the sole viewing and use of the addressee, if this fax has been received inadvertently or by a party other than the addressee please contact our offices immediately.

DSL Internet Corporation
5000 SW 75th Ave. Floor 3
Miami Fl 33155
October 29, 2004

Fax: 850 413 6537
Dale Buys
Regulatory Analyst
Bureau of Service Quality
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Fl 32399-0850

Docket No. 041205-TX

Dear Mr Buys:

This is serve as DSLi's response to your letter of October 14th 2004 to our office. I will attempt to address the issues outlined in your letter in the order in which they appear in your letter. Let me reassure you and the FPSC staff that DSLi has not attempted to knowingly violate any rules and/or regulations of the FPSC or the Administrative Code. Should the FPSC feel that any rules have not been followed, DSLi will be happy to cooperate with the Commission in resolving any such issues.

Premier Telecom (Premier) acting as DSLi's Agent for Local Service

Premier entered into an agreement with DSLi effective the 11th of March 2004 to resell DSLi's local service (The Agreement). Per paragraph 3(f) of The Agreement, Premier was to maintain control over its sales staff, and assure that they remain in compliance with the Commission's rules and regulation, in addition to maintaining accurate books and records with regard to its sales on behalf of DSLi.

Very soon after the Agreement became effective, DSLi became concerned with a number of Premier's early sales when it became apparent that Premier's sales staff had not sought adequate, or even any, authorization from potential customers to switch their Local Telephone Service. This resulted in a number of early cancellations and unnecessary costs to DSLi from the provisioning of unsupported sales made by Premier. This led DSLi to inquire into Premier's procedures in obtaining customers' authorizations and as a result, Premier replaced a portion of its sales force. During this period Premier was advised that DSLi routinely extends its customers a local and long distance freeze service to avoid customers being 'slammed' by other providers and to protect on data services delivered over the same lines.

Per the terms of The Agreement Premier was responsible for obtaining and retaining the appropriate customer authorization documentation for DSLi's local service. DSLi's standard service agreements include the following wording "Customer further authorizes DSLi and any other LEC to remove or place any Local Service Freeze or L/PIC freeze(s) on Customer lines upon written or verbal agreement from the Customer." Premier were made aware of this requirement and informed DSLi that their customer authorization processes were "fully compliant with all PSC and FCC rulings. DSLi has attempted to retrieve its customer authorizations from Premier with no response.

Porting of Working Numbers to an acquiring company

With reference to your allegation regarding porting of Working Numbers, DSLi does not hold any freezes on customer accounts where the customer has forwarded DSLi a written request confirming their desire to port to another carrier. In addition, DSLi has neither instructed its staff to refuse to port, nor is DSLi aware of any circumstances where it has refused to port a working number when such was requested by a customer.

All customers who have forwarded DSLi a written request to port to another carrier do not have a freeze on their line and are free to port away. At no time has DSLi employees made statements, nor is it our policy, that a customer will lose dial tone when switching from DSLi to another carrier.

On behalf of its customers, DSLi has lodged a number of complaints with the PSC for the following issue: Premier is using Universal wireless (dba Universal Telephone Company) to deliver the local service. To get around the local freeze Universal are telling BellSouth that these are Abandoned Stations. Thus obviously allows them to deliver another phone number over the same loop but the customer loses his existing number. As of this 26th we were aware of nearly 40 such instances. We have followed up with many of these customers and are being informed by the customer that they were not aware of this switch, and wanted their original number back. We have begun raising consumer complaints authorized by these customers. A list of these customers is attached at Appendix I.

Slamming of ex US Telecom Customers

It is DSLi's position that it has not slammed any customer of US Telecom or any other carrier. Considering the exigent circumstances under which DSLi provided service to the disconnected US Telecom customers, DSLi believes that it is in the public interest that the Commission waives the requirements of 25.4.118(1). In this case, Hurricane Frances, a category 5 hurricane, was approaching South Florida, and these customers would have been without service during the storm. In an emergency situation, Frank Johnson contacted the PSC to request their assistance in re-establishing the local services of approximately 600 US Telecom customers in the week prior to Labor Day.

In less stringent cases, the Commission has waived the notice requirement when such is in the public interest. In Docket No. 04-1095-TI, the Commission waived the carrier selection requirements of Rule 25-4.118, Florida Administrative Code, because, the Commission found that: "... in this instance it is in the public interest to waive the carrier selection requirements of Rule 25-4.118, Florida Administrative Code. If prior authorization is required in this event, customers may fail to respond to a request for authorization, neglect to select another carrier, and lose their long distance service." Here, DSLi acted in response to the emergency situation to protect the public interest. DSLi will submit a retroactive request if the PSC so requires.

DSLi acquired the customer base of US Telecoms customers on September 3, 2004 through an agreement with US Telecom. At this point the local service to US Telecom's customers had been suspended by BellSouth. At no charge to the end customer, DSLi worked with BellSouth to bring back service to these accounts as expeditiously as possible. Without DSLi's intervention, service to these customers would have been suspended, and they would have been without service on their existing numbers indefinitely. DSLi has not slammed these customers as DSLi has absorbed US Telecom's customer base. Effectively, DSLi has stepped in the shoes of US Telecom in providing service to these customers.

DSLi responded to the two complaints (CATS Requests Nos: 622846T Frank Baric and 623176T Luis Tapanes) on the 19th of October and the 20th of October 2004 respectively. With respect to both complaints, the customer notification to the PSC has been used as authorization to remove the local freeze and this has been communicated to the customer.

Notification of Transfer of US Telecom Customers to DSLi

DSLi believes that it acted in the best interests of the end user to reestablish services prior to the arrival of hurricane Frances and did notify all of the customers for whom it attempted to reestablish services and advised them of the process for continuing to adopt local services from DSLi. Due to the impending arrival of the hurricane DSLi took what it believed to be a responsible action on behalf of the customers to attempt to reestablish their service while simultaneously notifying them by mail of what was happening to them. In this notification these customers were *not* asked to pay for the reestablishment of services suspended by BellSouth, nor were they required to pay for the services provided by DSLi prior to the 10th September 2004.

DSLi at no time engaged in the practice of slamming. DSLi was in essence providing free emergency cover.

Ex US Telecom customers who did not want to reactivate their local services through DSLi were under no obligation to do so. DSLi requested customers to contact DSLi by the 22nd September to confirm continuation of local services with DSLi.

Request for Customer Information

As you are aware, both Federal and State law prohibit the disclosure of CPNI customer details without their prior authorization. DSLi has however provided a list (Appendix II) of the customer names that DSLi is providing local service to.

I look forward to discussing this matter with you, yours sincerely,



Mark Harris
Chief Financial Officer
DSL Internet Corporation