

BEFORE THE PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 041205-TX
ORDER NO. PSC-04-1263-PAA-TX
ISSUED: December 20, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION ORDER REQUIRING DSL INTERNET CORPORATION D/B/A DSLi TO REMOVE ALL PREFERRED CARRIER FREEZES PURSUANT TO RULE 25-4.083, F.A.C., FACILITATE PORTING OF SUBSCRIBERS' TELEPHONE NUMBERS PURSUANT TO RULE 25-4.082, F.A.C. AND TO INFORM CUSTOMERS OBTAINED FROM US TELECOM PURSUANT TO RULE 25-4.118, F.A.C.

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein 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. Apparent Violation of Rules 25-4.083 and 25-4.082, F.A.C.

Pursuant to Rule 25-4.082, Florida Administrative Code, (F.A.C.), Number Portability, a serving local provider (1) shall facilitate porting of the subscriber's telephone number upon request from the acquiring company, (2) a working number shall be ported regardless of whether a balance is owed, and (3) a local provider shall not disconnect a subscriber's working number, regardless of whether a balance is owed.

Pursuant to Rule 25-4.083, F.A.C., Preferred Carrier Freeze, a company is prohibited from placing Preferred Carrier (PC) Freezes on customers' accounts without the customer's authorization or requiring that a PC Freeze be a condition of obtaining service.

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FPSC-COMMISSION CLERK

A. Background

In late September 2004, our staff became aware that DSL Internet Corporation d/b/a DSLi (DSLi) is apparently imposing local PC Freezes on the accounts of its customers without their authorization. Our staff determined that a number of customers, who had presubscribed to Premier Telecom, Inc. (Premier) for long distance service and DSLi for local service, desired to switch their local service from DSLi to Premier. Premier claimed 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. It is our staff's understanding that Premier was an agent for DSLi; Premier collected payment from the customers, provided customer service, and performed the marketing and verification on behalf of DSLi. Premier provided its customers with long distance service and DSLi provided the local exchange service. However, some of Premier's customers wanted to switch from DSLi to Premier for their local exchange service.

In a letter dated October 14, 2004, our staff notified DSLi that its actions appear to be in violation of Rules 25-4.082 and 25-4.083, F.A.C. Furthermore, in a conference call with DSLi on October 6, 2004, our staff informed DSLi that it must remove any unauthorized PC Freezes on its customers' accounts for which it does not possess a valid authorization and allow any customer to port to the service provider of his or her choice. DSLi confirmed that it understood and would comply with the rules.

In its letter dated October 29, 2004, DSLi maintains that it does not hold any freezes on customers' accounts where the customers have forwarded DSLi a written request confirming their desire to port to another carrier. In addition, DSLi asserts that it 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. Furthermore, DSLi stated that all customers who have forwarded DSLi a written request to port to another carrier do not have a PC Freeze on their line and are free to port away. DSLi maintains that at no time have DSLi employees made statements, nor is it company policy, that a customer will lose dial tone when switching from DSLi to another carrier.

DSLi reported that it has attempted to retrieve its customers' authorizations for the PC Freezes from Premier with no response. During the period of time Premier was acting as an agent for DSLi, Premier was responsible for obtaining and retaining the appropriate customer authorization documentation for DSLi's local service. As an agent for DSLi, Premier was advised that DSLi routinely extends its customers a local and long distance freeze service, to avoid customers being 'slammed' by other providers.

Since October 4, 2004, this Commission received over 40 complaints against DSLi for placing PC Freezes on customers' accounts. The majority of the complaints are from Premier customers who wish to switch their local service from DSLi to Premier. Those complaints are pending resolution and closure. As the local exchange service provider, DSLi is responsible for

obtaining and retaining the customers' authorizations for PC Freezes. As of November 10, 2004, DSLi has not provided our staff with proof that its customers' authorized DSLi to place PC Freezes on their accounts.

B. Analysis and Decision

As this is DSLi's first incidence of problems concerning the removal of unauthorized PC Freezes and porting of customers' numbers to another local exchange company, this Commission will not impose a monetary penalty upon DSLi. This is consistent with this Commission's previous actions in Order No. PSC-02-1656-PAA-TX, issued November 26, 2002, Docket No. 020646-TX, In Re: Compliance Investigation of CAT Communications International, Inc., for apparent violation of Rule 25-4.110(16), F.A.C., Customer Billing for Local Exchange Telecommunications Companies, wherein this Commission Ordered CAT Communications International, Inc. to remove local service freezes placed on customers' accounts, but did not impose a monetary penalty on the company.

Accordingly, we hereby order DSL Internet Corporation d/b/a DSLi to immediately remove all Preferred Carrier Freezes placed on its customers' accounts for which the company does not possess valid authorizations pursuant to Rule 25-4.083, Florida Administrative Code, Preferred Carrier Freeze, and facilitate porting of subscribers telephone numbers upon request from acquiring companies pursuant to Rule 25-4.082, Florida Administrative Code, Number Portability. This Commission is vested with jurisdiction over this matter pursuant to Sections 364.01, 364.285, and 364.603, Florida Statutes.

II. Apparent Violation of Rule 25-4.118, F.A.C.

A. Background

It is DSLi's position that it has not slammed any customer of US Telecom or any other carrier as explained in its letter dated October 29, 2004. DSLi acquired the customer base of US Telecom on September 3, 2004, after BellSouth suspended service to US Telecom for failure to pay. DSLi claims that as Hurricane Frances was approaching South Florida, these customers would have been without service during the storm. 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 this Commission waive the requirements of 25.4.118(1), F.A.C. In this case, if prior authorization was required, customers may have failed to respond to a request for authorization, neglected to select another carrier, and possibly lost their long distance service. DSLi believes it acted in response to the emergency situation to protect the public interest and will submit a retroactive request if this Commission so requires.

DSLi reported that it notified 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. The customers were not asked to pay for the reestablishment of services nor were they required to pay for the services provided by DSLi prior to the September 10, 2004. DSLi stated that the former US Telecom customers who did not want to reactivate their local services through DSLi

were under no obligation to do so. DSLi reported that it requested that the US Telecom customers contact DSLi by September 22, 2004, to confirm if they wanted to continue to receive local service from DSLi.

In the week prior to Labor Day, Mr. Frank Johnson of DSLi contacted our staff and requested assistance with removing PC Freezes from approximately 600 customers of US Telecom. Mr. Johnson told our staff that DSLi had acquired the customer base of US Telecom. It appears that most 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. In addition, DSLi did not provide our staff with proof that DSLi informed US Telecom's customers about the acquisition of their local service.

B. Analysis and Decision

Although prior Commission approval is not required to transfer US Telecom's customer base to DSLi, it is common practice for the parties to notify this Commission of the transaction, and for the acquiring company to request a waiver of Rule 25-4.118, F.A.C. In this case, the customers have already been transferred and a rule waiver would only protect DSLi from potential slamming infractions stemming from complaints filed by former US Telecom customers. We find a retroactive waiver of Rule 25-4.118, F.A.C. is necessary in this case. Furthermore, as this is DSLi's first instance of potential slamming regarding the acquisition of a customer base, we find a monetary penalty is not warranted at this time.

Accordingly, we hereby require DSLi to inform customers obtained from US Telecom via letter within 10 days of this Commission's Consummating Order that the customers have an option to switch to another local provider of their choice and that they are under no obligation to continue to receive service from DSLi. This Commission is vested with jurisdiction over this matter pursuant to Sections 364.01, 364.285 and 364.603, Florida Statutes.

This Order will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by this Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, F.A.C., within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute shall be deemed stipulated. If no person files a protest, this docket shall be closed administratively upon issuance of the Consummating Order. Any action by this Commission in this docket shall not preempt, preclude, or resolve any matters under review by any other Florida Agencies or Departments.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that DSL Internet Corporation d/b/a DSLi is hereby ordered to immediately remove all Preferred Carrier Freezes placed on its customers' accounts for which the company does not possess valid authorizations pursuant to Rule 25-4.083, Florida Administrative Code, Preferred Carrier Freeze, and facilitate porting of

subscribers telephone numbers upon request from acquiring companies pursuant to Rule 25-4.082, Florida Administrative Code, Number Portability. It is further

ORDERED that DSL Internet Corporation d/b/a DSLi is required to inform customers obtained from US Telecom via letter within 10 days of the issuance of a Consummating Order that the customers have an option to switch to another local provider of their choice and that they are under no obligation to continue to receive service from DSL Internet Corporation d/b/a DSLi. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that should DSL Internet Corporation d/b/a DSLi fail to timely protest this Order, the facts shall be deemed admitted and the right to a hearing waived. It is further

ORDERED that any protest must identify with specificity the issues in dispute. In accordance with Section 120.80(13)(b), Florida Statutes, issues not in dispute will be deemed stipulated. It is further

ORDERED that if no person files a protest, this docket shall be closed administratively upon issuance of the Consummating Order. Furthermore, any action by this Commission in this docket shall not preempt, preclude, or resolve any matters under review by any other Florida Agencies or Departments.

By ORDER of the Florida Public Service Commission this 20th day of December, 2004.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk and
Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(SEAL)

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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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 10, 2005.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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