

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show) DOCKET NO. 920714-TI
cause proceedings against) ORDER NO. PSC-92-0781-FOF-TI
TRANS NATIONAL COMMUNICATIONS,) ISSUED: 08/10/92
INC. d/b/a MEMBERS' LONG)
DISTANCE ADVANTAGE for)
violation of Rules 25-24.470,)
25-4.111(1), 25-4.043, and)
25-4.118, F.A.C.)
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER TO SHOW CAUSE WHY A FINE SHOULD
NOT BE IMPOSED OR CERTIFICATE CANCELLED

BY THE COMMISSION:

Trans National Communications d/b/a Members' Long Distance Advantage (MLDA) is a switchless reseller of the volume discounted outbound services of Sprint Communications. As a certificated provider of interexchange telephone service (certificate no. 2952), it is subject to this Commission's jurisdiction.

Commission Staff first learned of the existence of MLDA through a customer complaint filed with the Division of Consumer Affairs on December 2, 1991. It was discovered that MLDA did not have a certificate to provide interexchange telephone service.

On December 24, 1991, Charles H. Helein, Attorney, filed an application on behalf of MLDA for authority to provide interexchange telecommunications service in Florida. The application was approved at the March 24, 1992, Agenda Conference. The certificate was issued and became effective on April 23, 1992.

Prior to the application's approval, the Commission received 11 complaints concerning MLDA from consumers. Each of the consumers complained their long distance service had been switched from their existing carrier of choice to another carrier without their permission (slamming). Many consumers identified the carrier they had been switched to as MLDA and stated they had received bills from this company although they had not authorized MLDA to have their long distance carrier changed or to bill them for service.

DOCUMENT NUMBER-DATE

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REC-RECORDS/REPORTS

Staff contacted Charles H. Helein, Regulatory Counsel for MLDA, regarding the consumer complaints. Mr. Helein responded that MLDA had not solicited intrastate traffic and explained any such traffic billed was "incidental traffic" and could not be blocked from carriage due to technological constraints.

The Division of Consumer Affairs alerted the Communications Division of this Commission through a memo dated May 27, 1992, that it was continuing to receive complaints against MLDA for unauthorized carrier changes (slamming). The memo also stated that MLDA had been slow in responding to complaints filed by Consumer Affairs staff on behalf of customers.

Eleven (11) additional complaints against MLDA have been received since MLDA's application was approved. Presently, the Commission has twenty-two (22) complaints involving MLDA on file. These complaints were filed between December 2, 1991 and June 4, 1992.

Due to the frequency and severity of complaints received against MLDA, its billing of intrastate calls prior to receiving an IXC certificate, and MLDA's failure to file timely responses to customer complaints, we believe this Order to Show Cause Why a Fine Should Not Be Imposed or Certificate Cancelled is appropriate as outlined below.

The Commission finds it appropriate to require Trans National Communications d/b/a Members' Long Distance Advantage to show cause why it should not be fined up to \$25,000 pursuant to Section 364.285(1), Florida Statutes, and/or have its certificate cancelled pursuant to Rule 25-24.474(1), Florida Administrative Code. Trans National Communications d/b/a Members' Long Distance Advantage is required to show cause pursuant to this Order for the following:

- (a) Violation of Rule 25-24.470, Florida Administrative Code, which precludes provision of intrastate interexchange telephone service without first obtaining from the Florida Public Service Commission a certificate for this purpose.
- (b) Submitting unauthorized carrier changes for processing and thereby causing excessive customer complaints
- (c) Violation of Rules 25-4.111(1) and 25-4.043, Florida Administrative Code. Rule 25-4.111(1) mandates that each telephone utility receiving customer complaints must respond to those

complaints within fifteen (15) days. Rule 25-4.043 mandates a response to Commission staff inquiries within fifteen (15) days from the date of inquiry.

(a) Violation of Rule 25-24.470

MLDA was both providing and billing intrastate telephone service prior to obtaining its certificate. The Commission Staff first learned of MLDA's operation through customer complaints filed with the Commission's Division of Consumer Affairs. The first complaint was filed on December 2, 1991, and ten (10) more were filed prior to the Commission granting MLDA's application for a certificate at the March 24, 1992, Agenda Conference. Billing intrastate telephone service without first obtaining a certificate from the Commission is in direct violation of Rule 25-24.470(1), F.A.C., which provides:

No person shall provide intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits for payment for services be collected, until the effective date of a certificate [emphasis added], if granted. However, acquisition of equipment and facilities, advertising and other promotional activities may begin prior to the effective date of the certificate at the applicant's risk that it may not be granted. In any customer contacts or advertisements prior to certification, the applicant must advise the customer that certification has not and may never be granted.

When the Commission staff brought this to the attention of MLDA, Mr. Helein responded on behalf of the company in a letter dated March 30, 1992, that states:

TNC has discovered that some intra-Florida calling has occurred. This calling is beyond TNC's ability to control. First, as a switchless rebiller, TNC has no control over the facilities or equipment used to transport any of its customers' calls. TNC is not able therefore to block or default intrastate calling should any occur despite its pointed efforts to prevent such calling in states, like Florida, in which its application for certification remains pending.

Mr. Helein further explained that TNC had difficulty in effectively policing the thousands of orders its national marketing program produces each month. Mr. Helein emphasized that TNC was merely exercising its federal rights to market and provide TNC's interstate services.

MLDA should have refrained from offering its services to customers in Florida prior to the date its certificate became effective, as required by Rule 25-24.470(1). Although MLDA stated it was exercising its federal rights to market and provide interstate services, the company knew or should have known the provision of such services would also result in the company providing and billing intrastate telephone service, directly contrary to Rule 25-24.470(1), F.A.C.

Additionally, when MLDA was marketing its service to Florida customers prior to receiving its IXC certificate, the company did not advise these customers it had no certificate, as required by Rule 25-24.270(1). This was determined when the Commission staff reviewed the customer complaints filed with the Commission and when they reviewed the telemarketing script submitted to the Commission by MLDA's regulatory counsel. The telemarketing script in use at the time unauthorized carrier changes occurred made no mention of MLDA's lack of a certificate.

(b) Submitting unauthorized carrier changes for processing

Twenty-two (22) customer complaints involving MLDA indicate the company caused customers' long distance carriers to be switched to Sprint Communications or MLDA without the customers' knowledge or authorization. Reviewing various complaints received from customers, the Commission concluded customers:

- 1) had not requested or authorized a carrier change;
- 2) did not know their carrier had been changed until they received a bill from MLDA;
- 3) were upset their telephone calls had not been handled by their preferred carrier;
- 4) were concerned they would incur PIC change charges from the LEC; and
- 5) were angry they had been inconvenienced by having to contact various telephone companies and regulatory agencies in order to correct the situation.

This unauthorized switching of long distance carriers by MLDA is in direct contravention to Rule 25-4.118(1), F.A.C., which was adopted and became effective in March 4, 1992, and states in pertinent part:

The primary interexchange company (PIC) of a customer shall not be changed without the customer's authorization.

Additionally, this type of unauthorized switching by MLDA is directly contrary to the theme of Section 364.14, Florida Statutes, which directs the Commission to correct the unjust or unreasonable practices of any telecommunications company.

In a letter dated June 17, 1992, Charles H. Helein, Regulatory Counsel for MLDA, explained that the company was taking several steps in order to reduce what he called ". . . customer confusion, marketing errors and rare occasions of agent non-compliance with customer change order verification procedures . . ." According to MLDA, it has implemented the following changes:

- 1) revision of its agents' telemarketing script;
- 2) implementation of third party verification procedure;
- 3) increased live monitoring of telemarketing calls; and
- 4) improvement of telemarketing agent training.

Although this Commission acknowledges MLDA's attempts to improve its marketing practices and to reduce complaints, the company should have implemented procedures to prevent unauthorized carrier changes prior to provision of service.

(c) Violation of Rules 25-4.111(1) and 25-4.043, Florida Administrative Code.

Rule 25-4.111(1), Florida Administrative Code, states:

Each telephone utility shall make a full and prompt investigation of all complaints and service requests made by its customers, either directly to it or through the Commission and respond to the initiating party within fifteen (15) days. The term "complaint" as used in this rule shall be construed to mean any oral or written report from a subscriber or user of telephone service relating to a physical defect, difficulty or

dissatisfaction with the operation of telephone facilities, errors in billing or the quality of service rendered.

Additionally, Rule 25-4.043, Florida Administrative Code, states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Since its certificate was issued, MLDA has failed to timely file responses in seven of the ten complaints filed against it. Some responses have been untimely as much as a month past the 15 days specified in Rule 25-24.480, F.A.C., and were received only after certified letters were sent or duplicate copies mailed or faxed to MLDA.

For the foregoing reasons, we find it appropriate to order MLDA to show cause why a fine should not be imposed or its certificate cancelled.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Trans National Communications d/b/a Member's Long Distance Advantage (MLDA) shall show cause why it should not be fined up to \$25,000 per day for each violation set forth herein and/or have its certificate cancelled for the violations set forth herein. It is further

ORDERED that any response to this Order shall be filed pursuant to the requirements set forth below. It is further

ORDERED that failure to respond within the time period set forth below shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and shall constitute a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such a default shall be effective on the day subsequent to the date set forth below. It is further

ORDERED that upon default, MLDA will have its certificate cancelled and/or will be required to pay a fine as determined by the Commission. It is further

ORDER NO. PSC-92-0781-FOF-TI
DOCKET NO. 920714-TI
PAGE 7

ORDERED that in the event of default, the Commission may cancel the certificate of MLDA and direct the appropriate Interexchange Carriers to terminate service to MLDA. It is further

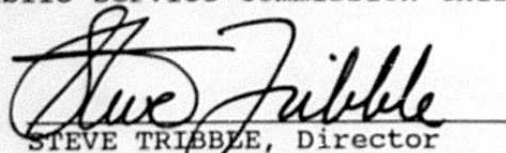
ORDERED that, in the event of a default, the Commission may impose a fine against MLDA, the payment of which must be made within thirty (30) days after default. Failure to pay such fine within the time period allowed shall result in this Commission directing the appropriate Interexchange Carriers to terminate service to MLDA, until the fine is paid. It is further

ORDERED that in the event of a default, this is the only notice that MLDA will receive prior to termination of its telephone service for failure to pay the fine. It is further

ORDERED that in the event of a default, this docket shall be closed administratively; otherwise, this docket shall remain open pending resolution of the show cause process.

ORDERED that in the event the Commission imposes a fine against MLDA, and does not direct MLDA's certificate to be cancelled, the payment to the Commission of such fine by MLDA shall result in this docket closing administratively.

By ORDER of the Florida Public Service Commission this 10th day of August, 1992.



STEVE TRIBBLE, Director
Director of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 hearing or judicial review will be granted or result in the relief sought.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on August 31, 1992.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.