

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against USLD Communications, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries; and investigation and determination of appropriate method for refunding interest and overcharges on intrastate 0+ calls made from pay telephones and in a call aggregator context.

DOCKET NO. 000036-TI  
ORDER NO. PSC-00-2090-PAA-TI  
ISSUED: November 2, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
E. LEON JACOBS, JR.  
LILA A. JABER  
BRAULIO L. BAEZ

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING OFFER OF REFUND AND ORDERING REFUND OF  
OVERCHARGES AND INTEREST  
AND  
ORDER APPROVING OFFER OF SETTLEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein, with the exception of our decision to approve an offer of settlement to pay a \$5000 voluntary contribution, 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.

DOCUMENT NUMBER-DATE

14199 NOV-28

FPSC-RECORDS/REPORTING

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### BACKGROUND

On May 18, 1990, USLD Communications, Inc. (USLD) was issued Certificate Number 2469 to operate as an interexchange telecommunications company. On February 1, 1999, Rule 25-24.630, Florida Administrative Code, was amended to cap rates for intrastate 0+ and 0- calls from pay telephones or a call aggregator context to \$.30 per minute plus \$3.25 for a person-to-person call or \$1.75 for a non person-to-person call.

Our staff routinely conducts test calls from pay telephones to verify that rates charged for intrastate 0+ calls conform to the provider's tariff and comply with the Commission's rate caps. Staff compared USLD's billed rates for 0+ test calls from pay phones and USLD's tariffed operator service rates to the rate caps established in Rule 25-24.630, Florida Administrative Code. Based on this comparison, staff determined that USLD was charging a pay phone surcharge of \$0.25 on intrastate 0+ calls. By adding the pay phone surcharge to the surcharges USLD applied on person-to-person (\$3.25) and non person-to-person (\$1.75) calls, the total cost appeared to exceed our operator service provider rate caps.

On May 25, 1999, our staff mailed a certified letter to USLD informing it that charges on an April 13, 1999, billing did not conform to our rate caps, and requested answers to questions pertaining to its operator service provider rates listed in its tariff. Our staff requested a response by June 9, 1999. On May 27, 1999, USLD received and signed for the certified letter.

From June 28, 1999 through October 1, 1999, our staff contacted USLD on several occasions attempting to obtain the requested information regarding operator service provider rates. On January 20, 2000, staff filed a recommendation to show cause USLD for apparent violation of Rule 25-4.043, Florida Administrative Code, for failure to respond to staff's inquiries. On January 28, 2000, USLD requested that Docket No. 000036-TI be deferred from the February 1, 2000 Agenda Conference, so that USLD would have more time to review the allegations in staff's recommendation.

On February 2, 2000, USLD reported intrastate revenues of \$377,121 on its Regulatory Assessment Fee Return for the period

January 1, 1999, through December 31, 1999. On March 17, 2000, USLD provided the first written response to our staff's initial request, indicating that it had exceeded Commission rate caps for operator services, and proposing corrective actions. On April 3, 2000, USLD provided a response detailing the methodology it used to estimate overcharges for operator services and the calculated amount of the overcharges. On July 6, 2000, USLD submitted a proposed settlement offer in lieu of proceeding with the show cause process.

On July 20, 2000, our staff filed a recommendation for the August 1, 2000, Agenda Conference, in response to USLD's proposed settlement. On July 28, 2000, USLD requested that Docket No. 000036-TI be deferred from the August 1, 2000 Agenda Conference so that it could revise its settlement offer to reflect actual call data rather than estimates. On September 12, 2000, USLD submitted a revised proposal for settlement, in which it offered to refund \$33,718.50 to its customers for overcharging end users for pay telephone calls, and to contribute \$5,000 to the General Revenue Fund for failing to respond to Commission staff inquiries. USLD's settlement proposal is appended to this Order as Attachment A, and is, by reference, incorporated herein.

#### OFFER OF REFUND

Within its September 12, 2000 settlement offer, USLD has offered to refund overcharges totaling \$33,718.50 to individual customers by January 31, 2001, and remit the balance to the General Revenue Fund. In previous correspondence, USLD stated that the pay phone surcharge was removed effective March 31, 2000. Test calls made by our staff support USLD's claim that the surcharge has been removed. Staff then used the amount of \$33,718.50 as the basis for calculating an interest charge of \$3,094.87, as required by Rule 25-4.114, Florida Administrative Code. The total amount to be refunded is \$36,813.37.

Based on the foregoing, we find it appropriate to accept USLD's offer of refund, including interest, as required by Rule 25-4.114, Florida Administrative Code. USLD shall refund \$33,718.50, plus interest of \$3,094.87, for a total of \$36,813.37, for overcharging end users from February 1, 1999, through March 31, 2000. Refunds shall be credited to the effected end users' local

exchange telephone bills by January 31, 2001. Any money not refunded, including interest, shall be remitted to the Commission by July 31, 2001, and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. USLD shall submit a preliminary report by April 30, 2001, and a final report by July 31, 2001. If the company fails to issue the refunds in accordance with the terms of this Order, the company's certificate shall be canceled, and this docket shall be closed.

SHOW CAUSE

By Section 364.285, Florida Statutes, we are authorized to impose a penalty of not more than \$25,000 upon any entity subject to our jurisdiction, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364.

We find that a show cause proceeding for apparent violation of Rule 25-4.043, Florida Administrative Code, is no longer necessary. As discussed below, USLD has made an offer of settlement in response to our staff's earlier recommendation to initiate show cause proceedings. USLD corrected the problem and cooperated with staff during the investigation. Moreover, as discussed above, USLD has agreed to refund overcharges back to its customers.

SHOW CAUSE SETTLEMENT

As part of its settlement offer, USLD agreed to make a contribution of \$5,000 to the General Revenue Fund for apparent violation of Rule 25-4.043, Florida Administrative Code. USLD states that it has made this offer without conceding that any grounds exist to justify imposition of a penalty. Based on the foregoing, we believe that USLD's settlement offer is a fair and reasonable resolution of this matter. Any contribution shall be received by this Commission within ten business days from the issuance date of this Order and shall identify the docket number and company name. We shall forward the contribution to the Office of the Comptroller for deposit in the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay the voluntary contribution in accordance with its settlement

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offer, the company's certificate shall be canceled, and this docket shall be closed.

If no person, whose interests are substantially affected files a protest of that portion of this Order issued as proposed agency action within the 21-day protest period, this Order will become final upon issuance of a consummating order. This docket shall remain open, however, pending the completion of the refund, receipt of the final report on the refund, and remittance of the \$5,000 voluntary contribution. After completion of the foregoing, this docket shall be closed administratively. If the company fails to complete the refund or to pay the settlement contribution, this docket shall be closed upon cancellation of the company's certificate.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that USLD Communications, Inc.'s September 12, 2000 offer of settlement, which, by reference, is incorporated herein as Attachment A, is hereby approved. It is further

ORDERED by the Florida Public Service Commission that USLD Communications, Inc. shall refund \$33,718.50, plus interest of \$3,094.87, for a total of \$36,817.37 for overcharging end users on intrastate 0+ calls made from pay telephones and in a call aggregator context from February 1, 1999, through March 31, 2000. It is further

ORDERED that the refunds shall be made through credits to end users' local exchange telephone bills by January 31, 2001. At the end of the refund period, any unrefunded amount, including interest, shall be remitted to the Commission by July 31, 2001, and forwarded to the Comptroller for deposit in the General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. It is further

ORDERED that any contribution by USLD Communications, Inc. toward its \$5,000 voluntary contribution shall be received by the Commission within 10 business days of the issuance date of this Order. It is further

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ORDERED that if USLD Communications, Inc. fails to issue the refunds or pay the voluntary contribution in accordance with the terms of this Order, the company's certificate shall be canceled, and this docket shall be closed. It is further

ORDERED that USLD Communications, Inc. shall submit a preliminary and final report in accordance with the terms of this Order. It is further

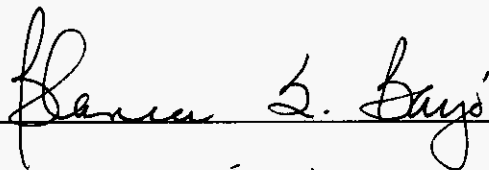
ORDERED that the provisions of this Order, issued as proposed agency action, with the exception of our decision to approve USLD Communications, Inc.'s offer of settlement to pay a \$5000 voluntary contribution, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 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 if USLD Communications, Inc. fails to complete the refund or pay the voluntary contribution, this docket shall be closed upon cancellation of the company's certificate. It is further

ORDERED that if no timely protest to the proposed agency action portion of this Order is filed within 21 days of the date of issuance of this Order, the Order will become final upon issuance of a consummating order. This docket shall remain open, however, pending the completion of the refund, receipt of the final report on the refund, and remittance of the \$5,000 voluntary contribution. After these tasks are completed, this docket shall be closed.

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By ORDER of the Florida Public Service Commission this 2nd Day  
of November, 2000.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

TV

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 hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action, with the exception of our decision to approve an offer of settlement to pay a \$5000 voluntary contribution, 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 Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 23, 2000. If such a petition is filed, 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. In the

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

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

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 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 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.



**MCWHIRTER REEVES**  
ATTORNEYS AT LAW

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TALLAHASSEE, FLORIDA 32301  
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(850) 222-5606 Fax

September 12, 2000

Mr. Ray Kennedy  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Pay telephone evaluation-USLD  
Docket Number: 000036-TI

2000 SEP 12 11:47  
DIVISION OF  
COMPETITIVE SERVICES

Dear Ray:

In my letter of July 6, 2000, which summarized earlier correspondence, I described USLD's efforts to ascertain the amount of overcharges associated with the application of a \$0.25 set fee that caused certain USLD payphones to exceed, during the period February 1999-March 2000, a rate cap imposed by the Commission. In that letter I indicated that it had been necessary for USLD to estimate the number of calls for the period February-April 1999 because actual data for the period had been rendered unavailable by a change in accounting systems.

Subsequently, I informed you that, as a result of continuing efforts, USLD had succeeded in gaining the ability to retrieve actual data for the February-April 1999 period. At USLD's request, the Commission deferred its consideration of Staff's recommendation in the above docket to allow USLD an opportunity to revise calculations of overcharges based on actual, rather than estimated, data for the period.

That process has now been completed. The data shows that during the period February 1999-March 2000 a total of 134,874 calls were subject to the application of a \$0.25 set fee that caused total charges to exceed the cap imposed by the Commission. Accordingly, the total overcharges amounted to \$33,718.50. This represents an increase over the \$28,939.59 figure in my letter of July 6, 2000, which was based on a mixture of actual and estimated data.

In earlier correspondence USLD requested authority to contribute this amount, with interest, to the General Revenue Fund in lieu of refunds to individual customers. USLD now agrees to refund the overcharges to individual customers to the extent possible, and to remit to the General Revenue Fund only the amount that cannot be delivered to customers. USLD suggests the following time frame: refunds by the end of January, 2001; an initial report on the status of the refund effort by the end of April, 2001; and a final report by the end of July, 2001.

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Attachment A

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Ray Kennedy

September 12, 2000

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I will reiterate USLD's position relative to Staff's view that USLD did not respond adequately or timely to Staff's initial inquiries. To be clear, USLD does not concede that USLD's actions in responding to Staff constitute a violation of rules or regulations for which a penalty could be assessed. The unavailability of certain records and the departure from the Company--well into the internal investigation--of the employee to whom the task of preparing the report had first been assigned complicated USLD's ability to provide complete answers to Staff's questions. Based on correspondence, it appears to USLD that at one point there may have been miscommunication between Staff and the individual with whom Staff was in contact regarding USLD's need for more time within which to respond. However, while USLD attempted in good faith to be responsive to your request, USLD acknowledges that delays occurred, and more time was required to provide Staff with all of the information it requested than Staff expected-and more than USLD intended. In the spirit of settlement, and without conceding that any grounds exist that would justify the imposition of a penalty, USLD offers to contribute \$5,000 to the General Fund. This offer is contingent on acceptance of this amount (and the refund of inadvertent overcharges described herein) in full settlement of any issues associated with Staff's evaluation of USLD's pay telephone charges during the period February, 1999 - March 2000 and USLD's responses thereto.

Yours truly,



Joseph A. McGlothlin

JAM/kmr

cc: Carol Kuhnow

Cindy Trevino