

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 010245-TI
ORDER NO. PSC-01-1903-AS-TI
ISSUED: September 24, 2001

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING SETTLEMENT

CASE BACKGROUND

On October 7, 1997, OLS, Inc. (OLS) was granted Certificate No. 5224 to provide interexchange telecommunications services within the State of Florida. Our 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 on September 28, 2000. During the period of October 11, 2000, through December 7, 2000, our 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, provided our staff with its plan to reduce the number of slamming complaints, and indicated that the slamming instances should cease.

On February 19, 2001, this docket was opened to initiate show cause proceedings against OLS based on the significant increase in

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slamming complaints against OLS that were received by the Commission since December 1, 2000. The increase in complaints occurred after OLS indicated to our 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.

During the period of July 15, 1999 through March 9, 2001, we received 282 complaints that were initially categorized as slamming. Our staff closed 49 of those complaints as apparent rule violations. On March 15, 2001, OLS filed its Regulatory Assessments Fees (RAFs) for calendar year 2000 and reported intrastate operating revenue of \$358,232.59, for the period of January 1, 2000, through December 31, 2000.

On March 22, 2001, our staff filed its recommendation for the April 3, 2001, Agenda Conference in which it recommended that we order OLS to show cause why it should not be fined for 49 apparent slamming violations. Counsel requested for OLS and was granted a deferral from the April 3, 2001, Agenda Conference on March 29, 2001. From March 30, 2001 through July 13, 2001, our staff and OLS' legal counsel were involved in ongoing negotiations which resulted in a proposed settlement to resolve the show cause issues.

SETTLEMENT OFFER

On May 21, 2001, our staff conducted 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. OLS submitted its revised settlement proposal on July 13, 2001. In its settlement proposal, OLS 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, Commission 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 our 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 our 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 that they are in full compliance with Rule 25-4.118, Florida Administrative Code.

Since 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. We believe that by having more control over the telemarketing process, OLS should be able to reduce potential slamming problems in the future.

RAF PAYMENT

During its investigation into the apparent slamming violations by OLS, our staff discovered that OLS had not yet paid its Regulatory Assessment Fees (RAF) for the calendar year 2000. Consequently, our staff added the violation of Rule 25-4.0161, Florida Administrative Code, to the docket title. However, during the approval and filing process for our staff's 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, shall not be assessed a fine of \$500 for the apparent violation of Rule 25-4.0161, Florida Administrative Code, Regulatory Assessment Fees; Telecommunications Companies.

DECISION

Based on the foregoing, we find it appropriate to accept OLS' revised settlement proposal, which includes a voluntary payment of \$51,000 to the State of Florida General Revenue Fund. The payment shall be made in six equal monthly intervals in the amount of \$8,500 each. The first payment shall be received within 30 days from the issuance date of this Order and shall identify the docket number and company name. Each subsequent payment shall be due within 30 day intervals following the first payment and shall also

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identify the docket number and company name. We will 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.

This docket shall be closed administratively when OLS remits all six of its payments, totaling \$51,000, and provides us with a report demonstrating the company's compliance with its settlement offer in conjunction with its sixth and final payment. If, however, OLS fails to pay in accordance with the terms of its settlement offer, Certificate No. 5224 shall be canceled and this docket shall 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, our staff will bring the matter for our consideration and will allow OLS an opportunity to be heard on the matter.

We are vested with jurisdiction over these matters pursuant to Sections 364.285, 364.336, and 364.603, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that OLS, Inc.'s revised settlement offer is hereby approved as set forth in the body of this Order. It is further

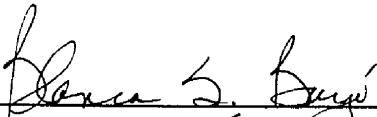
ORDERED that OLS, Inc. shall remit a voluntary contribution of \$51,000 to the Florida Public Service Commission to be paid in equal installments of \$8,500, with the first payment being made within 30 days after the issuance of this Order. It is further

ORDERED that in the event that OLS, Inc. fails to pay its voluntary contribution of \$51,000, Certificate No. 5224 shall be canceled administratively. It is further

ORDERED that this docket shall remain open until OLS, Inc.'s remits the voluntary contribution of \$51,000, and provides a report demonstrating that it has complied with its settlement offer, thereafter, this docket shall be closed administratively.

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By ORDER of the Florida Public Service Commission this 24th
day of September, 2001.



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

(S E A L)

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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 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.

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.