

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

FEBRUARY 20, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (COX) *WPC MCB*
DIVISION OF COMMUNICATIONS (WILLIAMS) *KA*

RE: DOCKET NO. 960295-TI - APPLICATION FOR CERTIFICATE TO
PROVIDE INTEREXCHANGE TELECOMMUNICATIONS BY
WORLD LONG DISTANCE, INC.

AGENDA: MARCH 4, 1997 - REGULAR AGENDA - PROPOSED AGENCY ACTION
FOR ISSUE 2 - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\960295MO.RCM

CASE BACKGROUND

• On March 6, 1996, World Long Distance, Inc. (WLD) applied to the Florida Public Service Commission (Commission) for a certificate to provide interexchange telecommunications service in Florida.

• Mr. Luis Coello is the president and sole owner of WLD. He is also the president and sole owner of Telecuba, Inc. (Telecuba) Telecuba is a provider of telecommunications services through debit cards.

• Telecuba is currently the subject of a show cause proceeding before the Commission (Docket No. 960217-TI) for alleged offering of interexchange telecommunications service without a certificate of public convenience and necessity. The hearing is scheduled for May 28, 1997, and the Agenda Conference is scheduled for August 19, 1997.

• Commission staff (staff) has deferred its recommendation on the WLD application for an IXC certificate, pending the outcome of the Telecuba show cause proceeding.

• On February 12, 1997, World Long Distance, Inc. filed with the Commission in Docket No. 960295-TI a Motion for Immediate Grant

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of a Certificate of Public Convenience and Necessity. Staff
believes the following recommendations are appropriate.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant World Long Distance, Inc.'s motion for immediate grant of certificate of public convenience and necessity?

RECOMMENDATION: No. Staff recommends that the Commission deny World Long Distance, Inc.'s motion for immediate grant of certificate of public convenience and necessity and defer its decision on World Long Distance, Inc.'s application for a certificate, pending the outcome of Docket No. 960217-TI. Further, staff recommends that the Commission order World Long Distance, Inc. to discontinue intrastate interexchange carrier service in Florida until granted a certificate.

STAFF ANALYSIS:

WLD argues that Commission staff's delay in processing the WLD application is unwarranted on the basis of Mr. Coello's common ownership of Telecuba and WLD. WLD further contends that WLD was formed in response to the Telecuba matter so that Telecuba customers would be able to get value from the prepaid calling cards that they purchased. WLD states that the Commission's delaying of WLD's application is a violation of Section 253(a) of the Telecommunications Act of 1996 (Act), which states as follows:

No state or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

As a result, WLD requests through its motion that the Commission grant it a certificate conditioned upon any action or requirement which might be taken or imposed in the Telecuba matter which would affect WLD's authorization.

Rule 25-24.471 (3), Florida Administrative Code, relating to an application for an IXC certificate, states:

(3) A certificate will be granted if the Commission determines that such approval is in the public interest.

Chapter 364.337(3), Florida Statutes, relating to intrastate interexchange telecommunications services and certification, states:

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(3) The commission shall grant a certificate of authority to provide intrastate interexchange telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

Thus, the granting of a certificate is not automatic, but is within the discretion of the Commission based upon the applicant's ability to meet the criteria.

Staff has several concerns with WLD's motion. First, as previously stated, the sole owner and president of the IXC applicant, Luis Coello, and his company Telecuba are the subject of a Commission show cause proceeding for the alleged violation of Commission rules. Until the show cause proceeding is resolved, WLD's managerial capability and ability to hold an IXC certificate in the public interest cannot be determined.

Secondly, Mr. Coello has admitted in his pre-filed direct testimony in the Telecuba case that WLD has and continues to offer intrastate IXC service for the Telecuba debit cards without a Commission-approved certificate of convenience and necessity, which in itself appears to be a violation of Rule 25-24.470, Florida Administrative Code. Mr. Coello states that he does have an IXC certificate from the FCC to allow WLD to offer interstate and international telecommunications services. (Direct Testimony of Luis Coello, Telecuba, Inc., Docket No. 960217-TI, p.6-7)

Finally, staff does not believe that the Commission's deferral of a decision in this docket is a violation of Section 253(a) of the Act. The Commission is charged by this section of the Act not to prohibit an entity from offering intrastate interexchange telecommunications services. Section 253 of the Act, however, must be read and enforced in its entirety. Section 253(b) of the Act states:

(b) Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

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Thus, Section 253(a) must be read in the context of Section 253(b), which gives the Commission the authority to impose requirements, such as IXC certification based on the public interest, to protect consumers and ensure the quality of telecommunications services. Therefore, under the Act, the Commission could defer its decision on WLD's IXC application in an effort to protect Florida consumers and to comply with state law.

Therefore, staff recommends that the Commission deny World Long Distance, Inc.'s motion for immediate grant of certificate of public convenience and necessity and defer its decision on World Long Distance, Inc.'s application for a certificate, pending the outcome of Docket No. 960217-TI. Further, staff recommends that the Commission order World Long Distance, Inc. to discontinue intrastate interexchange carrier service in Florida until granted a certificate.

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ISSUE 2: In the event the Commission determines a decision should be made on World Long Distance Inc.'s application at this time, should the Commission grant World Long Distance, Inc.'s application?

RECOMMENDATION: No. In the event the Commission determines a decision should be made on the application at this time, staff recommends that the Commission deny World Long Distance, Inc.'s application.

STAFF ANALYSIS: As mentioned previously, staff has several concerns with granting WLD an IXC certificate at this time. First, WLD's president and owner's company, Telecuba, is the subject of a current show cause proceeding before the Commission. Secondly, WLD currently offers intrastate IXC services in Florida without a Commission-approved certificate, which is contrary to Chapter 364.337(3), Florida Statutes, and Rule 25-24.470, Florida Administrative Code. Therefore, staff recommends that the Commission deny WLD's application for an IXC certificate as not being in the public interest, if the Commission finds a decision should be made on WLD's application at this time.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If the Commission approves staff's recommendation in Issue 1, this docket should remain open until the Commission resolves the show cause proceeding against Telecuba in Docket No. 960217-TI. Upon resolution of Docket No. 960217-TI, staff shall recommend and the Commission shall decide whether WLD should be granted a certificate.

If the Commission denies staff's recommendation on Issue 1 and grants or denies staff's recommendation on Issue 2, this docket should be closed unless a person whose substantial interests are affected by this decision files a protest with the Commission within 21 days of the issuance of the Proposed Agency Action.

STAFF ANALYSIS:

If the Commission approves staff's recommendation in Issue 1, this docket should remain open until the Commission resolves the show cause proceeding against Telecuba in Docket No. 960217-TI. Upon resolution of Docket No. 960217-TI, staff shall recommend and the Commission shall decide whether WLD should be granted a certificate. Staff will make its recommendation on the WLD application for the next available agenda after the Commission's order in Docket No. 960217-TI becomes final and effective.

If the Commission denies staff's recommendation on Issue 1 and grants or denies staff's recommendation on Issue 2, this docket should be closed unless a person whose substantial interests are affected by this decision files a protest with the Commission within 21 days of the issuance of the Proposed Agency Action.