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April 3, 1997

- * VIRGINIA BAR ONLY
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VIA OVERNIGHT MAIL

Ms. Blanca S. Bayo
Florida Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Initiation of Show Cause Proceedings Against Telecuba, Inc. for
Violation of Rule 25-24.470, F.A.C., Certificate Required
Docket No. 960217-TT

- ACK _____
- AFA _____
- APP 1
- CAF _____
- CMU 1
- CTR _____
- EAG _____
- LEG 2
- LIN 3
- OPC _____
- RCH _____
- SEC 1
- WAS _____
- OTH _____

Dear Ms. Bayo:

Pursuant to the Order Establishing Procedures issued in the above-captioned proceeding, transmitted herewith for filing on behalf of Telecuba Inc., are fifteen copies of Telecuba's Prehearing Statement and the associated Certificate of Service. Please acknowledge receipt of this filing by returning a date stamped copy marked "DSR/MFB" in the return envelope provided for that purpose.

If there are any questions, please communicate directly with the undersigned.

Sincerely,

Mitchell F. Brecher
Counsel to Telecuba, Inc.

Enclosures

cc: William P. Cox

DOCUMENT NUMBER-DATE

03505 APR-4 97

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause
proceedings against Telecuba, Inc.
for violation of Rule 25-24.470,
F.A.C., Certificate Required

DOCKET NO. 960217-TI

PREHEARING STATEMENT OF TELECUBA, INC.

Pursuant to Rule 25-22.038(3), Florida Administrative Code, and the Order Establishing Procedure issued in this proceeding,¹ Telecuba, Inc. (Telecuba) hereby submits its Prehearing Statement and provides the following information:

- a. The name of all known witnesses that may be called by the party, and the subject matter of their testimony.

At this time, Telecuba plans to call one witness, Mr. Luis Coello, President of Telecuba. He will testify about the matters addressed in his pre-filed testimony filed in this proceeding on January 27, 1997 and in his pre-filed rebuttal testimony filed March 28, 1997. Mr. Coello's testimony will describe the business and operations of Telecuba; the business relationship between Telecuba and World Access Communications Corporation (World Access); the events of 1995 which caused temporary disruption to the use of Telecuba prepaid calling cards to purchase telecommunications service provided by World Access; and the recall, notification, refund and card replacement efforts of Telecuba. Also, Mr. Coello will testify as to why Telecuba has not violated any provision of Florida Statutes or any rule or policy of the

¹Order No. PSC-97-0047, issued January 9, 1997.

Commission, and why it should not be subject to fines or other sanctions imposed by the Commission.

Telecuba reserves the right to produce additional witnesses and to address additional matters in testimony if deemed necessary based upon PSC Staff's responses to discovery requests submitted to it by Telecuba on March 27.

- b. A description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each.

At this time, Telecuba plans to submit as exhibits the initial testimony and rebuttal testimony of Luis Coello; the Amended Verified Complaint in World Access Communications Corporation v. Telecuba, Inc., et al, Case No. 96-00828, filed in the Circuit Court of the 11th Judicial Circuit, In and For Dade County, Florida, notices of refund availability and affidavits of publication of rate refund availability published in El Nuevo Herald, a newspaper of general circulation published in Miami, Florida. Telecuba reserves the right to introduce additional exhibits obtained through the discovery process and which become available to it during preparation for hearing. At this time, it is expected that all exhibits offered by Telecuba will be sponsored by witness Luis Coello. However, it is possible that additional witnesses will testify and that other exhibits may be sponsored by those witnesses.

- c. A statement of the basic position in the proceeding.

It is Telecuba's position that Telecuba is a distributor and marketer of prepaid calling cards -- cards which customers use to obtain telecommunications services from authorized telecommunications carriers whose identities are clearly indicated on the prepaid calling cards. Telecuba never intended to operate as a telecommunications company and that it has not operated

as a telecommunications company. It is also Telecuba's position that it took appropriate actions following World Access' cessation of service. As a result of those actions, prepaid calling cards for use on the World Access network were promptly recalled, refunds and replacement cards have been issued, and Telecuba arranged for telecommunications service to be provided through another carrier. Accordingly, it is Telecuba's position that it has not violated any laws, rules or policies of the Commission, and that no sanctions should be imposed against it.

- d. A statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue.

Factual questions at issue in this proceeding include,

but are not limited to, the following:

1. Who provided the telecommunications services paid for by use of Telecuba prepaid calling cards?
2. Who determined the rates for telecommunications services paid for by use of Telecuba prepaid calling cards?
3. Who held itself out as the provider of telecommunications services paid for by use of Telecuba prepaid calling cards?
4. Who was identified to consumers as the provider of telecommunications services paid for by use of Telecuba prepaid calling cards?
5. Who provided customer service to customers in connection with calls paid for by use of Telecuba prepaid calling cards?

6. Did World Access comply with the order of the Commission to provide to Telecuba call detail record information?
7. If World Access has not provided Telecuba with call detail information as required by the Commission, how has that failure affected Telecuba's ability to make customer refunds?
8. Did Telecuba purchase service from World Access on a usage basis?
9. Did World Access invoice Telecuba for telecommunications service usage?
10. Did the financial relationship between Telecuba and World Access result in Telecuba being a reseller of World Access service?
11. Has Telecuba promoted, solicited or offered use of Telecuba prepaid calling cards to place intrastate telephone calls within the state of Florida?
12. Has Telecuba ever knowingly sold, distributed, or marketed prepaid calling cards which could not be used to pay for telephone calls?
13. Upon learning that World Access had ceased completing calls paid for by use of Telecuba prepaid calling cards, did Telecuba promptly take steps to recall unsold cards and issue refunds and replacement cards?

14. Have consumers been harmed by actions taken by Telecuba in connection with its marketing and distribution of prepaid calling cards? If so, how many consumers have been harmed?
15. Whether the PSC has received any complaints from consumers regarding Telecuba, and, if so, how many complaints, and what has been the PSC's resolution of those complaints?
16. Has Telecuba been unjustly enriched from the marketing and distribution of prepaid calling cards?
17. Who controlled the 800 Service numbers printed on Telecuba prepaid calling cards and which are used by consumers to access World Access telecommunications services paid for by use of Telecuba cards?
18. Why World Access failed to comply with the Commission's January 1996 request that it transfer the 800 numbers printed on Telecuba calling cards to Telecuba, and what was the effect on Telecuba and users of Telecuba prepaid calling cards on World Access' failure to comply with that Commission request?
19. How does the manner in which Telecuba sells, markets and distributes prepaid calling cards differ from the manner in which other companies who are not telecommunications companies, including, for example, Eckerd's and Target Department Stores referred to in the Order to Show Cause and in the testimony of PSC Staff witness Moses, sell, market, and distribute prepaid calling cards?

- (e) A statement of each question of law the party considers at issue and the party's position on each such issue.

Questions of law at issue in this proceeding include, but are not limited to, the following:

1. Issue: Whether Telecuba intended to operate as a telecommunications company or has operated as a telecommunications company within the ambit of Fla. Stat. § 364.02(12)?

Position: Telecuba has never intended to operate as a telecommunications company nor has it operated as a telecommunications company within the ambit of Fla. Stat. § 364.02(12).

2. Issue: Whether Telecuba intended to offer intrastate interexchange telecommunications services or has offered intrastate interexchange telecommunications services within the ambit of Rule 25-24.470, F.A.C.?

Position: Telecuba has never intended to offer intrastate interexchange telecommunications services nor has it offered intrastate interexchange telecommunications services within the ambit of Rule 25-24.470, F.A.C.

3. Issue: Whether Telecuba has violated any Florida statute or any Commission rule in connection with its marketing and distribution of prepaid calling cards?

Position: Telecuba has not violated any Florida statute or Commission rule in connection with its marketing and distribution of prepaid calling cards.

4. Issue: Whether the activities of Telecuba, Inc. are within the jurisdictional authority of the Commission?

Position: Telecuba's marketing and distribution of prepaid calling cards for

interstate and foreign telecommunications services is not within the jurisdictional authority of the Commission.

5. **Issue:** Whether the Commission's prolonged refusal to act on the application of Telecuba's affiliated corporation, World Long Distance, Inc. for a certificate of public convenience and necessity to provide interexchange service constitutes a barrier to provision of intrastate telecommunications service in violation of Section 253 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 253?

Position: By refusing to act on the application of Telecuba's affiliated company, World Long Distance, Inc., for more than one year, the Commission's action -- or inaction -- is having the effect of prohibiting the ability of Telecuba from providing intrastate telecommunications services, in violation of Section 253 of the Communications Act.

6. **Issue:** Whether an order to all telecommunications companies to cease providing service to Telecuba would violate the Communications Act of 1934 as amended by the Telecommunications Act of 1996?

Position: An order by the Commission to cease providing service to Telecuba would violate several provisions of the Communications Act including, but not limited to, Section 201(a) (47 U.S.C. § 201(a)), and Section 251(a) (47 U.S.C. § 251(a)).

7. **Issue:** Whether an order to all telecommunications companies to cease providing service to Telecuba would violate any provisions of Florida law or the rules of the Commission?

Position: An order to all telecommunications companies to cease providing service to Telecuba would violate provisions of Florida Statutes and rules of the Commission.

8. **Issue:** Whether there is any legal basis under applicable Florida law for the Commission to order Telecuba to provide refunds in light of the uncontradicted evidence that Telecuba has voluntarily recalled cards, made refunds and issued replacement cards?

Position: There is no basis for the Commission to order refunds in light of uncontradicted evidence that Telecuba has voluntarily recalled cards, made refunds, issued replacement cards, and notified consumers of the availability thereof.

9. **Issue:** Whether there is any basis under applicable Florida law for the Commission to require Telecuba to pay a fine or other payment to the Commission or to the State Treasurer for deposit into the General Revenue Fund?

Position: There is no basis under applicable Florida law for the Commission to require Telecuba to pay any fine or make other payment to the Commission or to the State Treasurer in the absence of conclusive evidence that Telecuba has been unjustly enriched as a result of unlawful conduct.

10. **Issue:** What Commission rules are applicable to the marketing and distribution of prepaid calling cards and to the provision of prepaid calling card services, and what Commission rules applicable thereto were in effect at the time of Telecuba's commencement of its prepaid calling card marketing and distribution business and at the time of World Access' cessation of service to Telecuba?

Position: At the present time, there are no Commission rules specifically applicable to the marketing and distribution of prepaid calling cards or prepaid calling card services. Prepaid calling card rules were proposed in July 1996. However, they have not yet been adopted as final rules. No such rules were either proposed or in effect at the time of Telecuba's commencement of its prepaid calling card marketing and distribution business or at the time of World Access' cessation of service to Telecuba.

(f) A statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue.

1. **Issue:** Whether the Commission should attempt to regulate marketers and distributors of prepaid calling cards as telecommunications companies when the carrier whose service² are used in connection with the prepaid calling cards is clearly identified to consumers?

Position: As a policy matter, the entity offering telecommunications service to the public is the interexchange service provider which should be authorized to provide service and which is subject to regulation by the Commission. The mere

marketing and distribution of prepaid calling cards for use with the services of telecommunications carriers is not itself telecommunications service subject to regulation.

2. Issue: Whether it is significant that a marketer or distributor of prepaid calling cards is charged for usage?

Position: As a policy matter, the manner in which a marketer or distributor of prepaid calling cards is charged for the cards and the service represented on the cards should not affect whether the marketer or distributor is a telecommunications service provider. The nature of the prepaid calling card business is such that marketers, distributors and sellers of prepaid calling cards pay underlying service providers, directly or indirectly, for the cards and the usage associated with those cards. In this regard, there is no relevant difference between Telecuba and other retailers of prepaid calling cards (e.g., Eckerd's and Target). What is relevant as a policy matter is who is the entity which holds itself out to provide telecommunications service to the consumer.

3. Issue: Whether the public interest would be served by imposition of sanctions against Telecuba?

Position: The public interest would not be served by imposition of sanctions against Telecuba. The ability to use Telecuba prepaid calling cards was interrupted for a very brief period following World Access' cessation of service to callers who sought to pay for calls using Telecuba calling cards. The circumstances of that disruption are in dispute and are the subject of pending civil

litigation. What is not in dispute is the manner in which Telecuba sought to rectify the situation and satisfy consumers. Upon learning of the disruption, Telecuba immediately recalled all unsold calling cards to ensure that they would not get into circulation; it contacted the PSC in an effort to resolve the disruption; it made refunds and issued card replacements; it has willingly subjected itself to the Commission's processes and never has sought to evade its responsibilities. Because of the manner in which Telecuba has handled the situation caused by the World Access dispute, there is no basis for concluding that any consumers have been harmed. Accordingly, no public interest benefit would be obtained by imposition of sanctions against Telecuba.

Each of the above policy issues will be addressed by witness Luis Coello.

- (g) A statement of the issues that have been stipulated to by the parties.

At this time, there have been no issues stipulated to by the parties.

- (h) A statement of all pending motions or other matters the party seeks action upon.

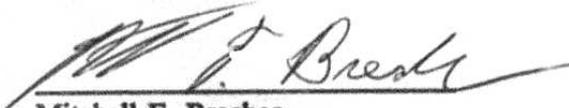
At this time, there are no pending motions or other matters which Telecuba seeks action upon. However, discovery is ongoing and it is anticipated that discovery disputes may occur which will result in motions to compel filed by the parties.

- (i) A statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefor.

Telecuba is not aware of any requirements set forth in the Order Establishing Procedure with which it will be unable to comply.

Respectfully submitted,

TELECUBA, INC.



Mitchell F. Brecher

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Washington, DC 20036
(202) 939-7900

Its Attorneys

April 4, 1997

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CERTIFICATE OF SERVICE

I, Antoinette R. Mebane, hereby certify that on this 4th day of April 1997, that a true and correct copy of the foregoing *Prehearing Statement* in Docket No. 960217-TI, has been served via UPS Overnight Delivery to the following:

William P. Cox
Staff Counsel
Florida Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850


Antoinette R. Mebane