

Talbott *[Signature]*
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FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

MAY 29, 1997

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

FROM: DIVISION OF LEGAL SERVICES (PELLEGRINI, PENA) *[Signature]*
DIVISION OF COMMUNICATIONS (PRUITT, STRONG) *[Signature]*
DIVISION OF AUDITING & FINANCIAL ANALYSIS (DRAPER) *[Signature]*
DIVISION OF CONSUMER AFFAIRS (STOKES) *[Signature]*

RE: DOCKET NO. ~~970312~~-TI - LONG DISTANCE SERVICES, INC. -
INITIATION OF SHOW CAUSE PROCEEDINGS FOR VIOLATION OF
RULES 25-4.118 AND 25-24.470, FLORIDA ADMINISTRATIVE
CODE, INTEREXCHANGE CARRIER SELECTION AND CERTIFICATION
OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED

DOCKET NO. 970352-TI - LONG DISTANCE SERVICES, INC. -
APPLICATION FOR CERTIFICATE TO PROVIDE INTEREXCHANGE
TELECOMMUNICATIONS SERVICES BY LONG DISTANCE SERVICES,
INC.

AGENDA: JUNE 10, 1997 - REGULAR AGENDA - ISSUE 2 PROPOSED AGENCY
ACTION -INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\970312.RCM

CASE BACKGROUND

On October 13, 1992, the Commission granted Long Distance Services, Inc. (LDS) Certificate No. 3114 to provide intrastate interexchange telecommunications service.

In April and June of 1995, the Division of Records and Reporting received returned mail previously sent to LDS marked, "moved left no address, unable to forward, return to sender." Rule 25-24.480, Florida Administrative Code, requires an interexchange carrier to inform this Commission within 10 days if there is a change in its address.

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FPSC-RECORDS/REPORTING

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On April 17, 1995, the Commission issued Proposed Agency Action Order No. PSC-95-1019-FOF-TI, imposing a fine or canceling LDS's certificate for failure to comply with Rule 25-24.480, Florida Administrative Code. The company failed to respond to the Order. On October 19, 1995, the Commission canceled LDS's certificate. In September 1996, staff of the Division of Consumer Affairs spoke with the President of LDS, Alan Barash, concerning unauthorized carrier change (slamming) complaints from consumers, and informed him that his company was no longer certificated in Florida.

On March 12, 1997, staff of the Division of Communications informed Mr. Barash again that certification was required. Mr. Barash stated that even though LDS moved to Michigan, its Florida telephone number had not changed, and he did not understand why LDS was not contacted prior to the cancellation of its certificate. Staff's procedure is to attempt to reach the company by telephone and mail. We are unable to explain why our efforts to reach the company by telephone were unsuccessful; however, the company did fail to respond to several notices in April and June of 1995. Therefore, on March 13, 1997, staff opened Docket No. 970312-TI to recommend that LDS be ordered to show cause why it should not be penalized for violation of Rules 25-4.118 and 25-24.470, Florida Administrative Code.

LDS filed an application with this Commission on March 20, 1997, to offer interexchange telecommunications service as a switchless rebiller in Florida. Staff opened Docket No. 970352-TI to address LDS's application. On April 29, 1997, staff of the Division of Communications received a letter from LDS proposing a resolution to the show cause matter and requesting that its application for certification as an interexchange telecommunications provider be approved. (Attachment A, pages 7-9)

In this recommendation staff addresses LDS's settlement offer and application for certification.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer submitted by Long Distance Services, Inc. as resolution of apparent violations of Rules 25-4.118, 25-24.470, 25-4.043 and 25-24.480 Florida Administrative Code, Interexchange Carrier Selection, Certificate of Public Convenience and Necessity Required, Response to Commission Staff Inquiries, and Records and Reports?

RECOMMENDATION: Yes. The Commission should accept the proposed settlement offer of Long Distance Services, Inc. since it is a reasonable resolution of the matters at issue. The \$6,000 offered should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285, Florida Statutes.

STAFF ANALYSIS: In the last 19 months the Division of Consumer Affairs closed 12 consumer complaints against LDS for slamming in violation of Rule 25-4.118, Florida Administrative Code. During this time period LDS was not certificated as required in Rule 25-24.470, Florida Administrative Code. (Attachment B, page 10) Although even one slamming complaint is not considered to be an acceptable level, it is not probable that all complaints will or can be eliminated. The 12 LDS cases represent approximately three/tenths of one percent of the 3,655 slamming cases closed in the last 19 months. In eight of the cases LDS's responses were not timely as required in Rule 25-4.043, Florida Administrative Code.

The settlement offer submitted by LDS can be summarized as follows:

- 1) LDS will pay \$6,000 for alleged violations of Rules 25-4.118, 25-24.470, 25-4.043 and 25-24.480, Florida Administrative Code.
- 2) LDS stopped marketing to Florida residential customers on January 16, 1997, and will not market in Florida without independent third party verification of at least 10% of the letters of authority (LOAs) and the mailing of information packages with

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prepaid postcards to all sales evidenced by an LOA. No sweepstakes type marketing will be used.

- 3) The Commission will grant a certificate to provide intrastate interexchange telecommunications service.

Had LDS responded to Order No. PSC-95-1019-FOF-TI concerning alleged violations of Rule 25-24.480, Florida Administrative Code, Records and Reports, the company would have been subject to a fine of \$250. The company is offering \$1,000 in its settlement proposal to resolve this issue. LDS is also offering \$5,000 to resolve the issues of slamming, not responding timely to staff inquiries, and operating without certification. Based on the number of slamming complaints, and consistent with past Commission decisions in Docket Nos. 970097-TI, Initiation Of Show Cause Proceedings Against Integrated Teleservices, Inc. For Violation Of Rule 25-24.490, Florida Administrative Code, Customer Relations: Rules Incorporated, And Rule 25-4.043, Florida Administrative Code, Response To Commission Staff Inquiries, and 960186-TI, Investigation Of MCI Telecommunications, Inc. Marketing Practices, staff would have recommended a fine of approximately \$3,000.

In the settlement offer LDS commits to independent third party verification of at least 10 percent of the LOAs received from Florida residential customers, notwithstanding that third party verification does not apply under present Commission rules when a company has an LOA. LDS also affirms that it will not market its telecommunications service through any sweepstakes program.

Staff believes that the company's settlement offer is fair and reasonable, and adequately addresses staff's concerns. Staff recommends that the Commission accept LDS's offer. The \$6,000 LDS has agreed to pay should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285, Florida Statutes.

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ISSUE 2: Should the Commission grant Long Distance Services, Inc. a certificate to provide statewide interexchange telecommunications service within the State of Florida as provided by Section 364.377(3), Florida Statutes?

RECOMMENDATION: Yes. LDS should be granted, after payment of \$6,000 in accordance with the settlement offer is received:

Florida Public Service Commission Certificate No. 4877

STAFF ANALYSIS: Section 364.337(3), Florida Statutes reads as follows:

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 to be served.

LDS filed an application with this Commission on March 20, 1997, to offer telecommunications service as a switchless rebiller in Florida. The company demonstrates sufficient managerial capability in the provision of telecommunications service. (Attachment C, pages 11-12) In regard to technical capability, LDS indicates in its application that the company will rely on the network operation and management of its underlying carrier. (Attachment D, page 13) A review of LDS's financial capability by the Division of Auditing and Financial Analysis indicates that the application appears to meet the requirements of Section 364.337(3), Florida Statutes. (Attachment E, pages 14-15)

Even though the Commission canceled LDS's certificate in 1995, due to its failure to notify staff of a new mailing address and its failure to respond to Order No. PSC-95-1019-FOF-TI, staff accepts the company's representation that these were oversights which will not happen again. Therefore, staff recommends that the Commission grant LDS a certificate to provide interexchange telecommunications service.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If no protest is timely filed by a person whose substantial interests are affected by the Commission's decision in Issue 2, this docket should be closed with the remittance for deposit in the State General Revenue Fund of \$6,000 as described in the settlement offer.

STAFF ANALYSIS: This docket should be closed if no person whose substantial interests are affected by the Commission's decision in Issue 2 files a protest within 21 days of the issuance date of the order.