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FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

MEMORANDUM

MAY 29, 1997

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

FROM: DIVISION OF LEGAL SERVICES (STOVER) *ND mch*  
DIVISION OF COMMUNICATIONS (PRUITT) *NP JW*  
DIVISION OF CONSUMER AFFAIRS (DURBIN) *BD AD*

RE: DOCKET NO. 970420-TI - BUSINESS DISCOUNT PLAN, INC. -  
INITIATION OF SHOW CAUSE PROCEEDINGS FOR VIOLATION OF  
RULES 25-4.118, FLORIDA ADMINISTRATIVE CODE,  
INTEREXCHANGE CARRIER SELECTION, AND 25-4.043, FLORIDA  
ADMINISTRATIVE CODE, RESPONSE TO COMMISSION STAFF  
INQUIRIES

AGENDA: JUNE 10, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\970420.RCM

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CASE BACKGROUND

On May 4, 1994, the Commission granted Trans National Telephone, Inc., Certificate No. 3548 to provide intrastate interexchange telecommunications service. On March 23, 1995, the Commission granted a name change to Business Discount Plan, Inc. (BDP).

In 1995, there were no valid unauthorized carrier change (slamming) complaints logged to BDP in the Division of Consumer Affairs.

In 1996, the Division of Consumer Affairs closed 41 BDP complaints as slamming in apparent violation of Rule 25-4.118, Florida Administrative Code. In 40 of the cases BDP did not respond to the Commission staff inquiries in a timely manner as required in Rule 25-4.043, Florida Administrative Code.

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During the first two months of 1997, the Division of Consumer Affairs closed 35 BDP cases as slamming. In 32 of the cases, BDP did not respond to the Commission staff inquiries in a timely manner as required in Rule 25-4.043, Florida Administrative Code. Fourteen cases had not been closed as of March 1, 1997.

Staff opened this docket with the intention of recommending the Commission order BDP to show cause why it should not be fined or have its certificate canceled for slamming violations and not responding timely to staff inquiries. After staff filed a recommendation, the company's attorney contacted staff and asked that the matter be deferred to allow BDP time to file a settlement offer.

At the May 19, 1997 Agenda Conference, the Commission deferred this item to allow staff time to gather additional information from BDP. On May 20, 1997, the company submitted a draft settlement offer for staff's review. On May 21, 1997, staff requested changes to the settlement offer and requested copies of the company's sales and third party verification scripts. On May 23, 1997, staff received the scripts and a revised draft settlement offer. Staff spoke with the company's attorney on May 27, 1997, and requested changes to the scripts and a signed settlement offer.

In this recommendation, staff addresses BDP's May 28, 1997, settlement offer. (Attachment A, pages 5-7)

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission accept the settlement offer submitted by Business Discount Plan, Inc., as resolution of apparent violations of Rules 25-4.118 and 25-4.043, Florida Administrative Code, Interexchange Carrier Selection and Response to Commission Staff Inquiries?

**RECOMMENDATION:** Yes. The Commission should accept the proposed settlement offer of Business Discount Plan, Inc., since it is a reasonable resolution of the matters at issue. The \$25,000 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. (PRUITT)

**STAFF ANALYSIS:** Between April 24, 1996, and February 28, 1997, the Division of Consumer Affairs received 90 complaints from consumers concerning unauthorized carrier changes. As of March 1, 1997, 76 of the cases were closed as being in violation of Rule 25-4.118, Florida Administrative Code. In each case, the unauthorized change involved telemarketing with third party verification.

The settlement offer submitted by Business Discount Plan, Inc. can be summarized as follows:

- (1) BDP admits no wrongdoing.
- (2) BDP will pay \$25,000 as a settlement offer for alleged violation of Rule 25-4.118, Florida Administrative Code, concerning the sale of intrastate interexchange telecommunications service prior to May 7, 1997, and for alleged violation of Rule 25-4.043, Florida Administrative Code, concerning timely responses to staff inquiries logged prior to May 7, 1997.
- (3) BDP will refund switch fees and rerate charges of any Florida consumer who initiates a complaint to BDP directly, or through a BDP affiliate, or through any governmental agency.
- (4) All BDP telephone solicitation will comply with State and Federal

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requirements with clear disclosure that "the contact is being made to solicit the customer to change their current long distance carrier to Business Discount Plan, Inc."

Staff believes the settlement conditions adequately address BDP's slamming complaints. The proposed revisions of the sales and verification scripts appear to staff to more accurately reflect the telecommunications service the company is selling. If the Commission staff fails to see a substantial reduction in the number of verified complaints, we have the option of opening a separate docket to address them at any time in the future. Therefore, staff believes the \$25,000 payment BDP has agreed to submit should be accepted and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285, Florida Statutes. This amount is reasonable and consistent with settlement payments made by other long distance companies in resolution of slamming activities.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed with the approval of Issue 1 and remittance of the \$25,000 settlement for deposit in the General Revenue Fund of the State of Florida.  
(STOVER)

STAFF ANALYSIS: If the Commission accepts staff's recommendation in Issue 1, upon the remittance of the \$25,000 settlement by BDP, this docket may be closed.

**ASSURANCE OF VOLUNTARY COMPLIANCE**

This Assurance of Voluntary Compliance is entered into by and between BUSINESS DISCOUNT PLAN, INC., a California Corporation ("BDP"), and the FLORIDA PUBLIC SERVICE COMMISSION (FPSC).

RECITALS

This Agreement is made with reference to the following facts:

A. On/or about May 7, 1997, the staff of the FPSC issued a recommendation to proceed with Order To Show Cause Proceeding under Docket No. 970420-TI. The recommendation to proceed with Order To Show Cause Proceeding alleged violation of Rules 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, and 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries (hereinafter referred to as "Show Cause Proceeding").

B. BDP desires to settle and resolve all issues currently pending related to the Show Cause Proceeding.

NOW, THEREFORE, the parties agree as follows:

1. Nature of Agreement:

This Assurance of Voluntary Compliance Agreement (AVC) is a settlement of a disputed matter. It shall not be considered an admission of a violation for any purpose. By entering into this AVC, BDP admits no wrongdoing. This AVC does not constitute disciplinary proceedings, actions or complaints against BDP, nor shall it constitute any evidence of admission of any kind regarding any issue set forth herein. In addition, this AVC does not constitute a finding that BDP has engaged in any unlawful activity, nor shall it be construed as a charge or evidence that BDP has engaged in any methods, acts, uses, practices or solicitations declared to be unlawful under Florida law, any other law, rule or regulation.

2. Payment of Fees:

Upon acceptance and approval of this AVC by the FPSC, BDP shall pay the sum of Twenty Five Thousand Dollars (\$25,000.00) to FPSC as and for a settlement offer.

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3. Withdrawal of Proceeding:

Upon acceptance and approval of this AVC by the FPSC, and receipt of the Twenty Five Thousand Dollar (\$25,000.00) settlement offer, FPSC shall withdraw its recommendation to proceed with the Show Cause Proceeding and Docket No. 97-0420-TI shall be closed. This AVC shall be deemed to apply as a settlement, compromise, and release with regard to any and all sales of intrastate interexchange telecommunication service by BDP through May 7, 1997. Specifically, the FPSC agrees to not initiate any Show Cause Proceeding for alleged violation of Rule 25-4.118 of the Florida Administrative Code, Interexchange Carrier Selection, for any sale of intrastate interexchange telecommunication service by BDP prior to May 7, 1997. Additionally, FPSC agrees that it shall not initiate any Show Cause Proceeding for alleged violation of 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, concerning any inquiry made by the FPSC to BDP prior to May 7, 1997.

4. Customer Restitution:

Immediately upon acceptance and approval of this AVC by FPSC, and in compliance with Florida Statutes and Administrative Code, BDP shall refund or credit to any Florida customer who initiates a complaint (whether the complaint is made directly to BDP, a BDP affiliate, or any governmental agency) of unauthorized conversion of telephone services the full amount of any charges incurred as a result of an unauthorized conversion of telephone service for: (1) Any charges imposed by the local exchange carrier for the unauthorized switch and restoration to the preferred long distance provider; and (2) The amount, if any, by which BDP's long distance charges exceed the amount which the customer would have been charged by their existing long distance carrier if the unauthorized switch had not occurred.

5. Assurance of Future Compliance:

Effective immediately upon execution of this AVC, BDP agrees to adhere to each of the following requirements:

A. All future solicitations for telephone services conducted by BDP in Florida shall comply with all applicable Federal and Florida Regulations and Statutes, including, but not limited to, 47 C.F.R. 64.1100, and Rules 25-4.118 and 25-4.043, F.A.C.

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B. In connection with any telemarketing solicitation and/or third-party verification of a Florida customer to switch long distance telephone service, BDP and its agents shall clearly disclose that the contact is being made to solicit the customer to change their current long distance carrier to Business Discount Plan, Inc.

DATED: 5-27-97

BUSINESS DISCOUNT PLAN

By:   
THOMAS DAVID JERKINS  
President