

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Long Distance Services, Inc. d/b/a Long Distance Services, Inc. (U.S.A.) for violation of Rules 25-4.118 and 25-24.470, F.A.C., Interexchange Carrier Selection and Certificate of Public Convenience and Necessity Required.

DOCKET NO. 970312-TI

In re: Application for certificate to provide interexchange telecommunications service by Long Distance Services, Inc.

DOCKET NO. 970352-TI
ORDER NO. PSC-97-768-FOF-TI
ISSUED: June 30, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER APPROVING SETTLEMENT OFFER
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING CERTIFICATE

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein concerning certification is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

DOCUMENT NUMBER-DATE

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FLORIDA PUBLIC SERVICE COMMISSION

BACKGROUND

On October 13, 1992, we granted Long Distance Services, Inc. (LDS) Certificate No. 3114 to provide intrastate interexchange telecommunications service. In April and June of 1995, our staff received returned mail sent to LDS marked, "moved left no address, unable to forward, return to sender." Rule 25-24.480(2)(a), Florida Administrative Code, requires an interexchange carrier to inform this Commission within 10 days if there is a change in its address.

On August 17, 1995, we 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(2)(a), Florida Administrative Code. The company failed to respond to the Order. On October 19, 1995, we canceled LDS's certificate.

In September 1996, our staff spoke with the president of LDS concerning unauthorized carrier change (slamming) complaints from consumers, and pointed out that LDS was no longer certificated to operate in Florida. On March 12, 1997, our staff again informed LDS's president that certification was required. He stated that even though LDS had moved its offices to Michigan, it had retained its Florida telephone number. He did not understand why LDS had not been contacted prior to the cancellation of its certificate. We cannot be sure why our staff's efforts to reach the company by telephone were unsuccessful. The company, nevertheless, failed to respond to notices in April and June of 1995. On March 13, 1997, we opened Docket No. 970312-TI to initiate a show cause proceeding for violations of Rules 25-24.470 (Certificate of Public Convenience and Necessity Required) and 25-4.118 (Interexchange Carrier Selection), 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. We opened Docket No. 970352-TI to address LDS's application. On April 29, 1997, our staff received a letter from LDS proposing a resolution to the show cause matter, while requesting that its application for certification as an interexchange telecommunications provider be approved.

RESOLUTION OF SHOW CAUSE PROCEEDING

In the last 19 months our Division of Consumer Affairs processed 12 consumer complaints against LDS for slamming in

violation of Rule 25-4.118, Florida Administrative Code. In eight of the cases, LDS's responses were not timely as required by Rule 25-4.043, Florida Administrative Code. During this period of time, LDS was not certificated to operate in Florida as required by Rule 25-24.470, Florida Administrative Code.

To resolve the show cause proceeding, LDS offered a settlement. See Attachment A. The settlement offer is summarized as follows:

- 1) LDS would 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 again without independent third party verification of at least 10% of the letters of authority (LOAs) and the mailing of information packages with prepaid postcards to all sales evidenced by an LOA. No sweepstakes type marketing will be used.
- 3) The Commission would grant the company a certificate to provide intrastate interexchange telecommunications service.

The company failed to inform this Commission of its change of address. We have, however, determined that the company's Florida telephone number is in service and calls to the number are forwarded automatically to the Michigan offices. The company offered a payment in the amount of \$1,000 to resolve this matter.

LDS also offered a payment in the amount of \$5,000 to resolve the several matters of slamming, not responding timely to staff inquiries, and operating without certification. In the settlement offer, LDS has committed to employing independent third party verification of at least 10 percent of the LOAs received from Florida residential customers. We note that third party verification is not required under our rules where a company has an LOA. LDS also affirmed that it will not market its telecommunications service through any sweepstakes program.

Upon consideration, we find that the company's settlement offer is fair and reasonable. It adequately addresses our

concerns. Accordingly, we find it appropriate to approve the offer. Upon receipt by this Commission, the \$6,000 shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285, Florida Statutes.

CERTIFICATE

Section 364.337(3), Florida Statutes, provides that:

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 information contained therein shows that the company managers have sufficient managerial capability in the provision of telecommunications service. The company will rely on network operation and management by its underlying carrier. LDS's financial capability is also shown to be adequate.

Mindful that we canceled LDS's certificate in 1995, we find it appropriate, nevertheless, to grant LDS Certificate No. 4877, authorizing it to provide interexchange telecommunications service.

If this Order becomes final and effective, it will serve as LDS's certificate. It should, therefore, be retained by LDS as proof of certification.

Interexchange carriers (IXCs) are subject to Chapter 25-24, Florida Administrative Code, Part X, Rules Governing Telephone Service Provided by Interexchange Telephone Companies. Interexchange carriers are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapter 25-4, Florida Administrative Code. Further, in accordance with Order No. 16804, issued November 4, 1986, IXCs may not construct facilities to bypass a local exchange company without the prior approval of this Commission.

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Based on the foregoing, it is,

ORDERED by the Florida Public Service Commission that the settlement proposed by Long Distance Services, Inc., in resolution of this show cause proceeding, which is attached to this Order as Attachment A and is incorporated herein by reference, is hereby approved. It is further

ORDERED that Long Distance Services, Inc., is granted a certificate to provide interexchange telecommunications service, subject to the terms and conditions stated in the body of this Order. It is further

ORDERED that this Order will serve as Long Distance Services, Inc.'s certificate and should, therefore, be retained as proof of certification. It is further

ORDERED that the provision of this Order approving Long Distance Services, Inc.'s application for a certificate to provide intrastate interexchange telecommunications services, is issued as proposed agency action, and shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 30th
day of June, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP/KMP

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein granting certification is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 21, 1997.

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In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the effective date 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.

ATTACHMENT A
DOCKET NOS. 970312-TI & 970352-TI
MAY 29, 1997

BOOKHOLDER, BASSETT, GORNBEIN & COHEN, P.L.L.C.

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April 29, 1997

Via Facsimile and U.S. Mail

Ms Nancy Pruitt
Florida Public Service Commission
Division of Communications
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399

RE: Long Distance Services, Inc.

Dear Ms. Pruitt:

This letter is transmitted to you and your offices as a counter-offer to resolve a disputed claim. As such, neither the fact of the letter nor its contents are contemplated to be used before any tribunal as evidence of any admission, or a waiver or a diminishment of any defense, right or claim that Long Distance Services, Inc., [LDSI], or its officers, directors or employees, may have under either state or federal law.

Under federal evidentiary rule, Florida evidentiary rule and Michigan evidentiary rule, LDSI proposes a settlement offer to the pending applications to show cause, #970-312-TI and 970-352-TI, and any other similar claims arising out of the same facts and circumstances connected to those applications, including but not limited to, claims involving or implicating FLA 25-24.480, FLA 25-24.470, FLA 25-4.043, and FLA 25-4.118, that LDSI tender by check the total amount of six thousand (\$6,000.00) dollars, with one thousand (\$1,000.00) dollars being applied to resolve past issues relating to the claimed violation of FLA 25-24.480, and five thousand (\$5,000.00) dollars relating to the other claimed violations. In consideration of this, the Florida Public Service Commission shall grant a certificate to provide interexchange service to LDSI by the Public Service Commission meeting June 10, 1997.

As further consideration, LDSI represents that it is taking and will take remedial and reasonable measures to prevent future claims from being brought against it in Florida, including the following:

- 1) On January 16, 1997, LDSI ceased all marketing to Florida residential consumers, and will not begin any marketing without:
- 1) Independent third party verification of a minimum of ten (10%) percent of letters or authority [LOAs] transmitted to LDSI by Florida residential consumers;

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- ii) transmittal to all Florida consumers who indicate by written LOA a post card confirming that LDSI has received notification by that consumer that he or she wishes to transfer his or her long distance service, and providing each consumer a minimum of fourteen (14) days to fill out a preprinted prepaid post card canceling the prospective transfer (which will not occur until a minimum of twenty-one (21) days from the actual mailing of the proposed introduction package),
- iii) no marketing by any sweepstakes box or sweepstakes type of program

We hope this proposed settlement offer brings final closure to this matter. I would appreciate it if you would keep me apprised of the status of this resolution.

As always, should you have any questions or concerns regarding this or any other matter, please do not hesitate to contact me. I look forward to speaking with you soon.

Very truly yours,

BOOKHOLDER BASSETT,
GORNBEIN & COHEN, P.L.L.C.


Susan E. Cohen

SEC/kmh
cc: Allan Barash, President
Long Distance Services, Inc.