

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

DATE: SEPTEMBER 10, 1998

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

FROM: DIVISION OF LEGAL SERVICES (BEDELL, K. PEÑA) CB MB
 DIVISION OF CONSUMER AFFAIRS (MCHARGUE) [initials]
 DIVISION OF COMMUNICATIONS (BIEGALSKI) [initials]

RE: DOCKET NO. 971489-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST HOME OWNERS LONG DISTANCE INCORPORATED FOR VIOLATION OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER SELECTION

AGENDA: 09/22/98 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\971489.RCM

CASE BACKGROUND

Home Owners Long Distance Incorporated (HOLD), certificate number 3189, is a provider of interexchange telecommunications service and was certificated on August 17, 1993. HOLD reported gross operating revenues of \$1,123,668.45 on its Regulatory Assessment Fee Return for the period January 1, 1997, through December 31, 1997. As a provider of interexchange telecommunications service in Florida, HOLD is subject to the rules and regulations of this Commission.

For the period January 1, 1996, through March 11, 1998, the Commission staff has received 101 complaints against HOLD that have been determined to be apparent unauthorized carrier change (slamming) infractions in violation of Rule 25-4.118, Florida Administrative Code. Based on the number of complaints received by Commission staff and the number of apparent slamming violations, the Commission issued Order No. PSC-98-0676-SC-TI, on May 18, 1998,

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requiring HOLD to show cause why it should not have certificate number 3189 canceled or be fined \$1,010,000 for 101 apparent violations of Rule 25-4.118, Florida Administrative Code. On June 5, 1998, HOLD filed a Motion for Extension of Time for consideration and Partial Response asking that it be allowed an extension of thirty days to respond to the Show Cause Order. On July 7, 1998, HOLD filed an offer of settlement. (Attachment A, Pages 5-6)

Staff's recommendations on HOLD's settlement proposal and procedural motions are set forth below.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Home Owners Long Distance, Inc.'s Motion for Extension of Time for Consideration and Partial Response?

RECOMMENDATION: Yes. The Commission should grant HOLD's Motion for Extension of Time for Consideration and Partial Response. (Bedell)

STAFF ANALYSIS: As stated in the case background, HOLD was required by Order No. PSC-98-0676-SC-TI, issued May 18, 1998, to respond and show cause why it should not be fined for violation of Rule 25-4.118, Florida Administrative Code, by June 7, 1998. On June 8, 1998, HOLD timely responded (June 7 was a Sunday) to the order by filing a Motion for Extension of Time for Consideration and Partial Response. The ongoing settlement discussions with staff were the asserted grounds for HOLD's request for an extension of time. Because settlement negotiations were ongoing and have been successful to the extent a settlement offer supported by staff is now before the Commission, staff believes it is appropriate to recommend granting HOLD's motion. If the settlement offer discussed in Issue 2 of this recommendation is not approved, staff recommends that an additional extension of fifteen days from the date of the vote be granted in order to give HOLD an opportunity to fully respond to the Show Cause Order.

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ISSUE 2: Should the Commission accept the settlement offer proposed by Home Owners Long Distance Incorporated to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection?

RECOMMENDATION: Yes. (Biegalski)

STAFF ANALYSIS: On July 7, 1998, after several meetings with staff, HOLD submitted an offer to settle. In its settlement offer HOLD agreed to do the following:

- HOLD will not market its services in Florida through the use of a sweepstakes program or in any other manner, and will not submit any PIC change requests of Florida consumers to any local exchange carrier, for a period of at least three years from the date that this settlement offer has been agreed to by the PSC.
- HOLD will not resume its marketing efforts thereafter in the state of Florida until such marketing methods which HOLD proposes to utilize have been approved by the PSC staff.
- HOLD will continue to respond to consumer complaints in a timely manner, will refund any fees incurred by consumers for changing back to their preferred carrier, and will credit the difference between the rates charged by HOLD and the customers' preferred carrier, where such rates are lower than those charged by HOLD.
- HOLD will make a contribution of \$90,000 to the general revenue fund of the State of Florida with no admission of liability or wrongdoing, payable in the amount of thirty thousand dollars cash and sixty thousand dollars in twelve equal monthly installments.

Staff supports HOLD's proposal to stop marketing its services in Florida for a period of at least three years. Staff believes this will allow HOLD an opportunity to evaluate its current marketing techniques and make the necessary revisions in order to reduce consumer complaints. Staff also supports HOLD's proposal not to submit any PIC change requests of Florida consumers to the LECs for a period of at least three years. Due to the high volume of consumer complaints regarding apparent forgeries, staff believes it is in the public interest not to process any HOLD LOAs from Florida. Staff supports HOLD's proposal to obtain staff's approval

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of marketing methods before HOLD resumes marketing in Florida. Staff believes obtaining prior approval will result in fewer consumer complaints. Staff supports HOLD's proposal to continue to respond to complaints in a timely manner, refund any PIC change fees consumers have incurred, and rerate consumers' bills to those of their preferred carrier as necessary. Staff believes as a certificated telecommunications company, HOLD should continue to adhere to the rules of the Florida Public Service Commission.¹

The company has satisfactorily addressed each of staff's concerns. Moreover, the company has been very cooperative in resolving all issues. Therefore, staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, in the amount of \$90,000.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. With the approval of Issue 2, this docket should remain open pending the remittance of the \$90,000 voluntary contribution. HOLD will remit an initial payment of \$30,000 and thereafter will remit \$60,000 in twelve equal monthly installments. Upon remittance of the final settlement payment, this docket should be closed. The \$90,000 settlement should be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. **(Bedell)**

STAFF ANALYSIS: If the Commission approves the staff recommendation in Issue 2, this docket should remain open pending the remittance of the \$90,000 voluntary contribution. The voluntary contribution will be remitted with an initial installment of \$30,000 and thereafter will remit \$60,000 in twelve monthly installments. Upon submittance of the final settlement payment, this docket should be closed.

¹After staff had completed negotiations, staff contacted HOLD to determine if HOLD would revise its settlement offer to include sending \$100 checks to each of the individuals on whose complaints the Commission based its decision to issue an order to show cause. HOLD declined to agree to the modification

LAW OFFICES OF
GRESHAM, DAVIS, GREGORY, WORTHY & MOORE
A PROFESSIONAL CORPORATION

BRAD S. AKIN
MATTHEW D. BRADLEY
MOULTON S. DOWLER, JR.
CLAIBORNE B. GREGORY
CLAIBORNE B. GREGORY, JR.
JOHN W. HARRIS
PETER E. HOSEY
ANN M. LEAFSTEED
MARSHALL B. MILLER, JR.
RICHARD B. MOORE
NANCY A. NORMAN
RICHARD M. TAYLOR
A. W. WORTHY

112 EAST PECAN STREET
NINTH FLOOR
SAN ANTONIO, TEXAS 78205-1542
FOUNDED 1880

RUPERT N. GRESHAM (1892-1973)
RICHARD T. DAVIS (1911-1991)

TELEPHONE
(210) 226-4157

FACSIMILE
(210) 226-5154

OF COUNSEL
BEN J. CHILCUTT
RAUL M. CALDERON
SAMUEL H. BAYLESS

July 7, 1998

**VIA FACSIMILE 1 (850) 413-6250 and 1 (850) 413-6582
AND FEDERAL EXPRESS OVERNIGHT DELIVERY**

Ms. Kelly Biegalski
Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Ms. Cathy Bedell
Office of General Counsel
Florida Public Service Commission
2450 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Home Owners Long Distance, Inc. -- Docket No. 971489

Dear Ms. Biegalski and Ms. Cathy Bedell:

Pursuant to the decision of the Public Service Commission ("PSC") of the State of Florida, wherein the above docket was heard at its meeting on April 7, 1998, Home Owners Long Distance, Inc. ("HOLD"), by its undersigned, respectfully submits its revised settlement offer in the above-referenced matter. In the context of the meeting of the PSC, the Commission having stated its position has shown us that we are much closer in reaching a settlement than previously believed. In compliance with the Commission's instructions that we continue our negotiations, HOLD revises its previous settlement offer and respectfully proposes the following:

1. HOLD will not market its services in Florida through the use of a sweepstakes program or in any other manner, and will not submit to any local exchange carrier (LEC) orders to change the long distance service of Florida consumers to that provided by HOLD, for a period of at least three (3) years from the date that this settlement offer has been agreed to by the PSC. HOLD will resume its marketing efforts thereafter in the state of Florida, only upon the approval by the Staff of the PSC of such marketing methods which HOLD proposes to utilize.
2. HOLD will continue to respond to consumer complaints in a timely manner, will refund any fees incurred by consumers for changing back to their preferred carrier, and will credit the difference between the rates charged by HOLD and the consumers' preferred carrier, where such rates are lower than those charged by HOLD.

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Ms. Kelly Biegalski and Ms. Cathy Bedell
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3. HOLD will make a contribution of \$90,000.00 to the general revenue fund of the State of Florida with no admission of liability or wrongdoing, payable in the amount of thirty thousand dollars (\$30,000.00) cash and sixty thousand dollars (\$60,000.00) in twelve (12) equal monthly installments of five thousand dollars (\$5,000.00) each until paid.

As we discussed, you are currently negotiating with HOLD Billing Services ("HBS"), a separate entity, regarding the completion of its filings and other regulatory compliance in the State of Florida. I trust that those issues can be worked out, such that the foregoing proposals made by HOLD being acceptable to the PSC, a settlement can be concluded with HOLD while the HBS matters are finalized.

We believe that the foregoing settlement terms and conditions are consistent with the following considerations. It is the Commission's and HOLD's goal to minimize instances of slamming in the State of Florida. HOLD recognizes that its previous marketing methods have resulted in consumer confusion and allegations of slamming. The number of these complaints in Florida far outnumber complaints received in any other jurisdiction. Accordingly, in order to ensure that there is no change of further problems, HOLD will continue to desist from all marketing efforts in Florida in accordance with the terms of Paragraph 1 above. HOLD recognizes that its marketing activities created problems for Florida consumers and placed demands on the time and resources of the Commission and its Staff. HOLD believes that the interests of the public, the Commission and HOLD itself can best be served at this time through settlement. The amount of the voluntary contribution is significant, reflecting how seriously the Commission considers unauthorized carrier changes. At the same time, the amount of the payment reflects the fact that HOLD has voluntarily removed itself from the Florida marketplace.

If you have any questions, or wish to discuss this matter further, please do not hesitate to contact the undersigned.

Respectfully submitted,


Peter E. Hosey
Counsel for Home Owners Long Distance, Inc.

cc: Home Owners Long Distance
Attn: Joseph Webb and Dana Wilson
Swidler & Berlin
Attn: Marcy Greene

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