



# Public Service Commission

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## -M-E-M-O-R-A-N-D-U-M-

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COMMUNICATIONS SECTION

**DATE:** September 10, 1998

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

**FROM:** DIVISION OF LEGAL SERVICES (BEDELL) *CB MCB*  
 DIVISION OF CONSUMER AFFAIRS (DURBIN) *JD BJA*  
 DIVISION OF COMMUNICATIONS (BIEGALSKI) *LB*

**RE:** DOCKET NO. 971487-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST LCI INTERNATIONAL TELECOM CORP. 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\971487.RCM

### CASE BACKGROUND

On July 21, 1989, the Commission granted LCI International Telecom Corp. (LCI) Certificate Number 2300 to provide intrastate interexchange telecommunications service. LCI reported gross operating revenues of \$41,174,735 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, LCI is subject to the rules and regulations of this Commission.

On April 23, 1998, by Order No. PSC-98-0556-SC-TI, in Docket Number 971487-TI, the Commission ordered LCI to show cause in writing within 20 days of the effective date of the Order why it should not be fined \$710,000 for its apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection. On June 26, 1998 LCI filed a settlement offer as resolution to this docket. (Attachment A, Pages 6-10)

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission accept the settlement offer proposed by LCI to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection?

**RECOMMENDATION:** Yes. (Biegalski)

**STAFF ANALYSIS:** On February 26, 1998, LCI submitted an offer of settlement that was not accepted by the Commission. On April 14, 1998, LCI met with staff to discuss staff's concerns with the previous settlement offer.

On June 26, 1998, after several meetings with staff, LCI submitted an amended offer to settle. In its settlement offer LCI agreed to do the following:

- LCI will require each individual employee of the marketing agent to execute an acknowledgment form stating that the employee understands and accepts LCI's policy prohibiting submission of carrier changes without proper authorization.
- LCI will perform validity checks on LOAs submitted by the marketing agents to verify the accuracy of state, zip code, and area code information.
- LCI will verify 100% of all LOAs submitted in support of carrier changes for customers in Florida prior to submitting them to the LEC for processing. LCI will commence verification within 30 days of the date the order approving this settlement offer becomes final and effective, and continuing for a period of six months thereafter.
- Upon confirmation that any representative of a distributor has forged the signature of a purported new customer on a LOA, LCI will disclose to the appropriate law enforcement official the name of the representative for investigation and for action warranted by the circumstances.
- For a period of twelve months following the date the order approving this offer of settlement becomes final, a representative of LCI will hold a monthly conference call with the Commission staff for the purpose of describing responses made by the Company to any complaints alleging unauthorized changes of carriers, steps taken to implement the

measures delineated in this Stipulation, and other pertinent matters.

- Upon final approval of this offer of settlement, LCI will begin providing to the Commission staff a more detailed description of the investigation LCI makes of any future allegations of unauthorized changes in carriers in complaints it may receive from the Commission.
- Without conceding that it has committed any violation within the purview and meaning of Section 364.285, Florida Statutes, LCI will make a voluntary contribution of \$110,000 to the General Revenue Fund within 15 days of the date an order approving this offer of settlement becomes final.

Staff supports LCI's proposal to have each individual employee of the distributorship sign the acknowledgment form regarding submitting LOAs without proper authorization. Staff believes this will make the employees more aware of the significance of obtaining the proper authorization before submitting a PIC change request. Staff supports LCI's proposal to verify the accuracy of the information on the LOA by verifying the state, zip code and area code information. Staff believes this will reduce the occurrence of incorrect addresses on LOAs. Staff supports LCI's proposal to verify 100% of LOAs submitted in Florida prior to sending them to the LEC for processing. Staff believes this verbal contact with the customer will ensure the customer indeed wanted LCI's service. In addition staff is in support of LCI's proposal to provide the Commission with a more detailed description of its investigations in response to complaint inquiries.<sup>1</sup>

The company has satisfactorily addressed each of staff's concerns. Moreover, the company has been very cooperative and responsive in negotiations. 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 \$110,000.

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<sup>1</sup>After staff had completed negotiations, staff contacted LCI to determine if LCI 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. LCI declined to agree to the modification.

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**ISSUE 2:** What is the appropriate disposition of the pending motions?

**RECOMMENDATION:** If staff's recommendation in Issue 1 is approved, staff recommends the following disposition of pending motions: 1) the First Motion to Compel filed by the Public Counsel on January 21, 1998, should be determined to be moot; 2) the Motion for Oral Argument filed by LCI on February 4, 1998, should be determined to be moot; 3) the Motion for a More Definite Statement filed by LCI on May 13, 1998, should be determined to be moot; 4) the Motion for Oral Argument filed by LCI on May 13, 1998, should be determined to be moot; 5) the Motion to Hold Proceedings in Abeyance Pending Disposition of Offer of Settlement filed by LCI on May 14, 1998, should be granted. (Bedell)

**STAFF ANALYSIS:** In January of 1998, this docket was consolidated with Docket No. 971403. At that time, there was outstanding discovery in Docket No. 971403. This outstanding discovery was the basis of OPC's First Motion to Compel filed in Docket 971487 (now the only docket representing the consolidated dockets). If staff's recommendation to approve LCI's settlement offer is approved, outstanding discovery motions become moot. Therefore, staff recommends that the pending Motion to Compel should be determined to be moot. Similarly, LCI's Motion for Oral Argument filed with its Response to the Motion to Compel, should also be determined to be moot. If staff's recommendation to approve the settlement offer is not approved, these motions may be ruled on by the prehearing officer at a later date.

If the Commission votes to approve staff's recommendation in Issue 1 to accept LCI's settlement offer, the Motion for a More Definite Statement and the accompanying Motion for Oral Argument filed by LCI on May 13, 1998, are also moot because the underlying issues concerning alleged slamming violations raised in Order No. PSC-98-0566-SC-TI are resolved by the settlement offer. If staff's recommendation is not approved, these motions should be addressed in a separate recommendation at a later date.

Based on LCI's desire to cooperate with the Commission in minimizing complaints and to reach resolution of pending settlement negotiations, LCI also filed its Motion to Hold Proceedings in Abeyance Pending Disposition of Offer of Settlement on May 14, 1998. Staff recommends granting this motion as settlement negotiations were on-going at the time the motion was filed and have now culminated in staff's recommendation in Issue 1 to accept LCI's settlement offer. No opposition to this motion was filed.

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**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** No. With the approval of Issue 1, this docket should remain open pending the remittance of the \$110,000 voluntary contribution within five business days after the order approving the settlement becomes final. Upon remittance of the \$110,000 settlement, this docket should be closed. The \$110,000 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 1, this docket should remain open pending the remittance of the \$110,000 voluntary contribution. The voluntary contribution should be submitted within five business days after the order accepting the settlement becomes final. Upon remittance of the \$110,000 settlement, this docket should be closed.

LAW OFFICES

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June 26, 1998

**VIA HAND DELIVERY**

Martha Carter Brown  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 390-M  
Tallahassee, Florida 32399-0850

Catherine Bedell  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
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Tallahassee, Florida 32399-0850

RE: Consolidated Complaint and Show Cause  
Docket Nos. 971403-TI and 971487-TI

Dear Martha and Cathy:

In Order No. PSC-98-0566-SC-TI, the Commission required LCI International Telecom Corp, Inc. ("LCI") to show cause in writing why it should not be fined and/or its certificate should ~~not~~ be revoked for alleged willful violations of rules governing unauthorized carrier changes. The Order encompasses the allegations contained in a complaint filed by the Office of Public Counsel and the Attorney General, which is the subject of Docket No. 971403-TI.

On May 13, 1998, LCI filed a Partial Response to the Order, as well as a Motion for More Definite Statement of the allegations against it. In the Partial Response, LCI denies that it has willfully violated or refused to comply with any rule, order of the Commission, or provision of Chapter 364, Florida Statutes, within the meaning and purview of Section 364.285, Florida Statutes, which is the source of the Commission's authority to assess penalties.

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While LCI denies that it has engaged in conduct that warrants the imposition of a penalty, from the outset of these consolidated proceedings LCI has desired to cooperate with the Commission and to identify a basis for compromise and settlement of the issues raised by the allegations in the Order.

As you are aware from the meetings of LCI, Staff, and parties, LCI has also continued to actively manage its relations with the companies with whom LCI contracts to distribute its services. (LCI differs from many other carriers, in that independent contractors with whom LCI contracts for the distribution of its services through direct, face-to-face sales to customers constitute the primary source of LCI's new customers. Accordingly, the management of relations between LCI and such distributors comprises the single most effective tool for minimizing complaints of unauthorized changes that is available to LCI.) In response to an increase in the number of complaints received by the Commission during the Fall of 1997, LCI voluntarily terminated its relations with three such distributors with respect to all of their activities, whether in Florida or elsewhere. Since LCI took those actions, beginning in January of 1998, and continuing through the present, the number of complaints has fallen dramatically. LCI regards this trend as strong evidence that it has identified and dealt with the source of the complaints effectively.

These steps were costly to LCI. The terminated distributors were a significant source of incremental revenues, and the amount of revenues was growing each month. LCI conservatively estimates that the terminations will result in a negative revenue impact on Florida operations alone of more than \$1 million annually in the form of forgone new revenues.

In addition to monitoring the performance of its distributors, LCI has continued to evaluate ways to enhance its internal procedures so as to avoid or intercept inadvertent errors which potentially lead to complaints. As LCI described to you and others, LCI management now focuses quickly on any unusual quantities of LOAs it may receive from a particular distributor as an indication that additional review is warranted. Recently, this additional scrutiny enabled LCI to identify a number of discrepancies in LOAs submitted by one of the terminated distributors.

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On February 26, 1998, LCI submitted an offer of settlement that was not accepted by the Commission. Based on the concerns expressed during meetings with Staff and parties, LCI revised the original offer of settlement on May 14, 1998. The purpose of this letter is to clarify certain elements of the May 14 settlement offer and to modify others, in light of discussions between Staff and representatives of LCI following the May 14 letter. The full proposal is set forth below.

This offer is made solely for the purpose of settlement and compromise. In making the offer, LCI does not waive any of its legal rights or positions and does not concede that it has engaged in any willful violations of Commission rules punishable under Section 364.285, Florida Statutes.

As a basis for settlement and compromise of the issues in the consolidated dockets, LCI proposes the following:

1. In the past, the officer of a distributor organization with whom LCI holds a contract for marketing services executed the acknowledgement form stating that the distributor understands and accepts LCI's policy prohibiting submission of carrier changes without proper authorization. Prospectively, LCI will require each individual employee of the distributor to execute the acknowledgement.

2. LCI will implement an additional step in the processing of LOAs submitted by distributors. In this additional step, LCI's data bases will perform validity checks to verify the accuracy of state, zip code, and area code information.

3. Within 30 days of the date the order approving this settlement offer becomes final and effective, and continuing for a period of six months thereafter, LCI personnel will verify 100% of all LOAs submitted in support of carrier changes for customers in Florida prior to submitting them to the LEC for processing. The verification will be accomplished by LCI personnel, who will contact each customer from whom LCI receives an LOA to confirm the customer's intent to change to LCI's service before submitting that customer's LOA to the LEC.

4. Upon confirmation that any representative of a distributor has forged the signature of a purported new customer on a Letter of Authorization, LCI will disclose to the appropriate law enforcement official the name of the representative for investigation and for action warranted by the circumstances.



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5. For a period of twelve months following the date the order approving this offer of settlement becomes final, a representative(s) of LCI will hold a conference call with the Commission Staff monthly for the purpose of describing responses made by the Company to any complaints alleging unauthorized changes of carriers, steps taken to implement the measures delineated in this Stipulation, and other pertinent matters.

6. Upon final approval of this offer of settlement, LCI will begin providing to the Commission Staff a more detailed description of the investigation LCI makes of any future allegations of unauthorized changes in carriers in complaints it may receive from the Commission.

7. In the order approving this offer of settlement and closing the consolidated dockets, there will be no findings with respect to any of the allegations pending in Docket Nos. 972403-TI and 971487-TI, and no adjudication that LCI violated any provisions of any rule, order, or statute. This offer of settlement is contingent on the Commission accepting the offer on that basis.

8. No complaint or allegation of an unauthorized carrier change that has been received by the Commission on or before March 26, 1998, shall serve as the basis for an enforcement action against LCI; further, no complaint received subsequent to that date that is related to activities conducted by the three distributors who have been terminated by LCI (Sponsorep, Fifth Coast Marketing, and South Asian Media Wise) prior to their termination will form the basis for future punitive action against LCI.

9. Without conceding that it has committed any violation within the purview and meaning of Section 364.285, Florida Statutes, and without waiving any of its rights, LCI agrees to make a voluntary contribution of \$110,000 to the General Fund within 15 days of ~~the date~~ an order approving this offer of settlement becomes final and effective and not subject to appeal.

10. This offer of settlement is conditioned upon the entry of a final order approving all of the terms delineated herein, and closing both of the consolidated dockets. If any part of the offer is not approved, the entire offer of settlement shall be deemed withdrawn.

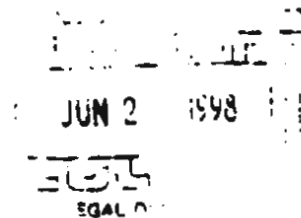
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LCI is available to meet with Staff if Staff wishes to discuss this proposal, or if Staff has any questions regarding any of its provisions.

Yours truly,

  
Joseph A. McGlothlin



JAM/jg

cc: Charles Beck  
Michael Gross  
Douglas Kinkoph