



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

RECEIVED -PSC

JUN 17 AM 10:20

RECORDS AND REPORTING

DATE: JUNE 17, 1999

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

FROM: DIVISION OF LEGAL SERVICES (CALDWELL) *awc*
 DIVISION OF AUDITING AND FINANCIAL ANALYSIS (SAMAAN) *ab*
 DIVISION OF COMMUNICATIONS (MCCOY) *jm*

RE: DOCKET NO. 980675-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST CENDANT MEMBERSHIP SERVICES, INC. FOR VIOLATION OF RULE 25-24.470, FLORIDA ADMINISTRATIVE CODE, CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED.

AGENDA: 06/29/98 - REGULAR AGENDA - ISSUE 1 - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\980675TI.RCM

CASE BACKGROUND

On August 12, 1998, by Order No. PSC-98-1090-SC-TI, in Docket Number 980675-TI, the Commission ordered Cendant Membership Services, Inc. (Cendant) to show cause in writing within 21 days of the issuance of the Order why it should not be fined \$25,000 for its apparent violations of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required. Cendant was providing intrastate interexchange telephone service without first obtaining a certificate of public convenience and necessity from the Commission. On May 19, 1999, Cendant filed a settlement offer as resolution to this docket. (Attachment A, Page 5)

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by Cendant to resolve the apparent violations of Rule 25-24.470, Florida Administrative Code, Certificate of Public Convenience and Necessity Required?

RECOMMENDATION: Yes. The Commission should accept the settlement offer proposed by Cendant. (McCoy)

STAFF ANALYSIS: Pursuant to Order No. PSC-98-1090-SC-TI, Cendant applied for and was granted an interexchange certificate which became final February 2, 1999, under the name CendantCom, Inc. in Docket No. 981107-TI, Order No. PSC-99-0080-FOF-TI. On May 19, 1999, Cendant sent staff its proposed settlement offer. In its settlement offer, Cendant agreed to do the following:

- Cendant agreed to apply for an interexchange certificate.
- Cendant agreed to refund any charges imposed in connection with intrastate services provided by Cendant prior to CendantCom, Inc.'s certification in Florida, with interest, by making a voluntary contribution to the State General Revenue Fund.
- Cendant agreed to pay a \$25,000 penalty for operating in Florida without a certificate.
- Cendant agreed that in the event that any additional customers make a complaint about services rendered during the relevant period, Cendant will issue those customers a full credit.

Staff supports Cendant's settlement proposal to Florida consumers. However, Cendant has been unable to distinguish the total charges for intrastate calls from charges for interstate calls for individual refunds to Florida customers. Neither Cendant's billing clearinghouse nor its underlying carrier was able to calculate either customer-specific or Florida-specific billing information. Without Florida consumer specific information, Cendant is unable to identify individual consumers to target for individual consumer refunds. However, based on nationwide and regional data Cendant was able to collect, Cendant has calculated a reasonably accurate estimate of the total intrastate calling card charges and monthly fees billed to consumers in Florida without authorization since August 1997.

Approximately 12% of Cendant's nationwide calling card billing during this period is attributable to the Southeastern Region and this totals \$12,132.72. Although, total Florida billings would be a percentage of that amount, Cendant is willing to pay the entire amount, plus interest, in order to expedite resolution of this proceeding. Staff has calculated a 30-day commercial paper rate of interest (4.84%) accumulated on the overcharges identified by Cendant and determined that \$932.26 is the appropriate amount of interest. Cendant has stated in its settlement that it will remit a \$25,000 voluntary contribution and the refund amount calculated plus interest of \$13,064.98 for a total of \$38,064.98 to be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes.

Cendant has satisfactorily addressed each of staff's concerns and has been cooperative in resolving all issues. Staff believes the monetary fine and settlement is adequate to compensate for the harm experienced by Florida consumers and, therefore, staff recommends accepting the settlement offer proposed by Cendant.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. With the approval of Issue 1, this docket should remain open pending the remittance of the \$25,000 voluntary contribution and overcharges refund of \$13,064.98. Cendant will remit the settlement proposed within 10 business days from the issuance date of the Commission Order. Upon remittance of the settlement payment, this docket should be closed. The settlement total \$38,064.98 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. If the company fails to pay in accordance with the terms of its settlement offer, the company's certificate should be canceled administratively with an effective date 5 days after the settlement payment was due.
(Caldwell)

STAFF ANALYSIS: If the Commission approves the staff recommendation in Issue 1, this docket should remain open pending the remittance of the \$25,000 voluntary contribution and overcharges refund of \$13,064.98 for a total settlement of \$38,064.98. The total settlement will be remitted within 10 business days after the Order

DOCKET NO. 980675-11

DATE: June 17, 1999

is issued. Upon remittance of the settlement payment, this docket should be closed. If the company fails to pay in accordance with the terms of its settlement offer, the company's certificate should be canceled administratively with an effective date 5 days after the settlement payment was due.

DOCKET NO. 980675
DATE: JUNE 17, 1999

ATTACHMENT A

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

NEW YORK, NY

LOS ANGELES, CA

MIAMI, FL

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

HONG KONG

AFFILIATE OFFICES

BANGKOK, THAILAND

JAKARTA, INDONESIA

MANILA, THE PHILIPPINES

MUMBAI, INDIA

TOKYO, JAPAN

FACSIMILE

(202) 955-9792

99

WRITER DIRECT LINE

(202) 955-9776

WRITER'S E-MAIL

rkf@kdw.com

May 19, 1999

BY FACSIMILE AND FEDERAL EXPRESS

Ms. Toni McCoy
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Cendant Membership Services, Inc.
Docket No. 980675-TI**



Dear Ms. McCoy:

As we have discussed, Cendant Membership Services, Inc. ("Cendant") is eager to work with the Florida Public Service Commission ("Commission") to settle and terminate the above-referenced proceeding. Specifically, Cendant is agreeable, as set forth in the Order to Show Cause issued on August 12, 1998, to (1) pay in full the fine of \$25,000, and (2) participate in a plan to refund to Florida customers charges imposed in connection with intrastate services provided by Cendant prior to CendantCom, Inc.'s ("CendantCom") certification in Florida, with interest. On January 11, 1999 CendantCom was certificated by the Commission to provide intrastate interexchange services in Florida in Docket No. 981107-TI; CendantCom's authorization became final on February 2, 1999. No other Cendant affiliate is providing intrastate telecommunications services in Florida.

As you know, with regard to calculating the refunds to be made to Florida customers, Cendant has investigated and reviewed relevant data to determine the total amount of intrastate calling card billings and associated monthly fees assessed in Florida during the relevant time period. Cendant has explained the difficulty it has experienced in its attempts to distinguish the total charges for intrastate calls from charges for interstate calls for each Florida customer, a task which required certain information from Cendant's underlying carrier and billing clearinghouse. That task has now proven to be virtually impossible, as have Cendant's efforts to gather even Florida-specific data. Unfortunately, neither MCI (Cendant's underlying carrier) nor

Ms. Toni McCoy
May 19, 1999
Page 2

International Telemedia Associates ("ITA") (Cendant's billing clearinghouse), was able to provide information sufficient to enable Cendant to calculate customer-specific refunds. ITA has ceased doing business, and no longer exists as a business entity; accordingly, Cendant was not able to receive *any* relevant information from that source. Although MCI was slightly more helpful, MCI is unable to produce a report which details Florida-specific call records. Without either customer-specific *or* Florida-specific billing information, Cendant is totally without the means to calculate an accurate refund per-customer in Florida.

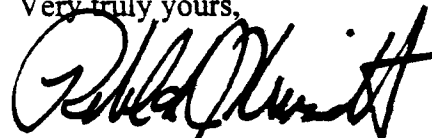
However, based on the nationwide and regional data that Cendant was able to collect, Cendant can calculate a reasonably accurate estimate of total intrastate calling card charges and monthly fees billed by Cendant in Florida without authorization since August 1997. Cendant notes that during the relevant period, at least 50 percent of all intrastate calling card charges and monthly fees billed were credited back to consumers, both by Cendant customer service and the relevant local exchange carriers. Of the remaining total billed nationally by Cendant, approximately 12 percent of Cendant's nationwide calling card billings during that period are attributable to the Southeastern Region -- this totals \$12,132.72. Although total Florida billings would be a percentage of that amount, Cendant is willing to pay the Commission the entire \$12,132.72 in order to expedite the resolution of this proceeding, which amount the Commission may then distribute to consumers as the Commission deems suitable. Cendant believes that this sum and payment plan would result in appropriate restitution for all affected Florida consumers, and would be commensurate with any harm consumers may have suffered. Based on conversations with staff, Cendant understands that the total amount of interest to be paid in connection with the refund amount is \$932.26. Accordingly, Cendant will pay a total amount of \$13,064.98 into the General Revenue Fund for distribution to affected customers.

In addition, in the event that any additional customers make a complaint about services rendered during the relevant period, Cendant will issue those customers a full credit.

We hope that the Commission will find this settlement proposal to be acceptable.

Please do not hesitate to contact me if you have any questions regarding Cendant's offer, or if you would like any additional information.

Very truly yours,



Rebekah J. Kinnett
Counsel for Cendant Membership Services, Inc.