

State of Florida



Public Service Commission

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RECORDS AND REPORTING
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DATE: JULY 20, 2000

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

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *JK*
 DIVISION OF ECONOMIC REGULATION (D. DRAPER) *DD RNT*
 DIVISION OF COMPETITIVE SERVICES (KENNEDY) *REK*

RE: DOCKET NO. 000036-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST USLD COMMUNICATIONS, INC. FOR APPARENT VIOLATION OF RULE 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES AND INVESTIGATION AND DETERMINATION OF APPROPRIATE METHOD FOR REFUNDING INTEREST AND OVERCHARGES ON INTRASTATE 0+ CALLS MADE FROM PAY TELEPHONES AND IN A CALL AGGREGATOR CONTEXT.

AGENDA: 08/01/00 - REGULAR AGENDA - ISSUES 1 and 2 - PROPOSED AGENCY ACTION - ISSUE 3 - FINAL ORDER - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\000036.RCM

CASE BACKGROUND

- May 18, 1990 - USLD Communications, Inc. (USLD) obtained Florida Public Service Commission Interexchange Telecommunications Certificate Number 2469.
- May 25, 1999 - Staff mailed a certified letter to USLD requesting information pertaining to its operator service provider rates listed in its tariff. Staff requested a response by June 9, 1999.

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- May 27, 1999 - USLD signed for and received the certified letter.
- June 28, 1999, through October 1, 1999 - Staff contacted USLD on several occasions attempting to obtain information regarding operator service provider rates.
- January 20, 2000 - Unsuccessful in its attempts to obtain information, staff filed a recommendation to show cause USLD for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.
- January 28, 2000 - USLD requested a deferral of its docket from the February 1, 2000, Agenda Conference.
- February 2, 2000 - USLD reported intrastate revenues of \$377,121 on its Regulatory Assessment Fee Return for the period January 1, 1999, through December 31, 1999.
- March 17, 2000 - USLD provided a preliminary response to staff's May 25, 1999, letter indicating that it had exceeded the Commission's rate caps for operator services.
- April 3, 2000 - USLD provided a response detailing the methodology it used to calculate overcharges for operator services and the calculated amount of the overcharges.
- May 17, 2000 - USLD submitted a proposed settlement offer in lieu of proceeding with the show cause process.
- July 6, 2000 - Following discussions with staff, Counsel for USLD submitted a revised settlement offer that disassociates the Commission's action on the proposed settlement offer for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, from the proposed method of determining the overcharges for operator services and the proposed method of refund. (Attachment A, Pages 10-12)

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept USLD Communications, Inc.'s calculation of \$28,939.59, plus \$3,088.29 interest, as required by Rule 25-4.114, Florida Administrative Code, Refunds, for a total of \$32,027.88, for overcharges to end users on intrastate 0+ calls placed from pay telephones and made in a call aggregator context from February 1, 1999, through March 31, 2000?

RECOMMENDATION: Yes. The Commission should accept USLD Communications, Inc.'s calculation of \$28,939.59, plus \$3,088.29 interest, as required by Rule 25-4.114, Florida Administrative Code, Refunds, for a total of \$32,027.88, for overcharges to end users on intrastate 0+ calls placed from pay telephones and made in a call aggregator context from February 1, 1999, through March 31, 2000. **(Kennedy)**

STAFF ANALYSIS: Staff routinely conducts test calls from payphones to verify that rates charged for intrastate 0+ calls conform to the provider's tariff and comply with the Commission's rate caps. Staff compared USLD's billed rates for 0+ test calls from payphones and USLD's tariffed operator service rates to the rate caps established in Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements. Based on this comparison, staff determined that USLD was charging a payphone surcharge of \$.25 on intraLATA 0+ calls. Added to the surcharges USLD applied on person-to-person (\$3.25) and non person-to-person (\$1.75) calls, the total cost appeared to exceed the Commission's rate caps.

On May 25, 1999, staff wrote USLD advising it of the apparent discrepancy and requesting additional information. Staff requested that USLD provide a response to staff's questions by August 24, 1999. Staff did not receive a response. Staff then contacted the company several times to discuss the pending request. After waiting over three months to receive a response from the company, staff opened Docket No. 000036-TI on January 11, 2000. The purpose for opening the docket was to initiate show cause proceedings against USLD for failure to respond to staff's inquiry regarding operator service rates charged for intrastate 0+ calls placed from payphones and made in a call aggregator context.

Staff's recommendation was filed on January 20, 2000, for the February 1, 2000, Agenda Conference. Prior to the Agenda Conference, USLD requested and was granted a deferral. Since this time, staff received correspondence from USLD that provided its

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methodology for determining the amount of the overcharges for operator services and the total amount that it had calculated.

USLD reported that a \$0.25 payphone surcharge was inadvertently applied to 0+ intraLATA calls. USLD's surcharges for a 0+ intraLATA call exceeded the Commission's rate caps for calls placed from payphones and calls made in a call aggregator context.

Because USLD changed its accounting system in May 2000, it did not have records for 0+ intraLATA calls made during the period February 1, 1999, through April 30, 1999. USLD had to estimate the overcharges for the period in which it was missing data. USLD calculated a monthly average for 0+ intraLATA calls based on the actual number of 0+ intraLATA calls placed after June 1, 1999. USLD applied the assumption that the volume of calls placed during the period where no data were available would be similar to the volume of calls placed during the period it had data. USLD concluded that approximately 115,758 calls were overcharged a total of \$28,939.59. Mathematically, 115,758 calls overcharged \$0.25 each would equate to \$28,939.50, however, the company reported \$28,939.59 and staff's interest calculations were based on this figure. Although there is a \$0.09 discrepancy, the magnitude of the discrepancy is insufficient to cause further delays due to revisions of the settlement offer by USLD and recalculation of the interest by staff. It is staff's opinion that the methodology used by USLD to calculate the total amount overcharged is logical and has merit. Also, USLD stated that the payphone surcharge was removed effective March 31, 2000. Test calls made by staff supports USLD's claim that the surcharge has been removed. Therefore, staff used USLD's figure of \$28,939.59 as a basis to calculate an interest charge of \$3,088.29, as required by Rule 25-4.114, Florida Administrative Code, Refunds, for a total of \$32,027.88

Based on the foregoing, staff recommends that the Commission should accept USLD Communications, Inc.'s calculation of \$28,939.59, plus \$3,088.29 interest, as required by Rule 25-4.114, Florida Administrative Code, Refunds, for a total of \$32,027.88, for overcharges to end users on intrastate 0+ calls placed from pay telephones and made in a call aggregator context from February 1, 1999, through March 31, 2000.

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ISSUE 2: Should the Commission accept USLD Communications, Inc.'s request that it be permitted to make a contribution of \$28,939.59, plus \$3,088.29 interest, for a total of \$32,027.88, to the State of Florida General Revenue Fund in lieu of refunds to individual customers who were overcharged for intrastate 0+ calls made from pay telephones and in a call aggregator context from February 1, 1999, through March 31, 2000?

RECOMMENDATION: No. The Commission should not accept USLD Communications, Inc.'s request that it be permitted to make a contribution of \$28,939.59, plus \$3,088.29 interest, as required by Rule 25-4.114, Florida Administrative Code, Refunds, for a total of \$32,027.88, to the General Fund in lieu of refunds to individual customers who were overcharged for intrastate 0+ calls made from pay telephones and in a call aggregator context from February 1, 1999, through March 31, 2000. The Commission should order USLD Communications, Inc. to credit customers' local exchange telephone bills beginning September 1, 2000, and ending November 30, 2000, for overcharging end users on intrastate 0+ calls made from pay telephones and in a call aggregator context from February 1, 1999, through March 31, 2000. By December 10, 2000, USLD Communications, Inc. should remit any unrefundable amount, including interest, to the Commission for forwarding to the Comptroller for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. USLD Communications, Inc. should submit a final report as required by Rule 25-4.114, Florida Administrative Code, Refunds, by December 10, 2000. If the company fails to issue the refunds in accordance with the terms of the Commission's Order, the company's certificate should be canceled, and this docket should be closed. **(Kennedy)**

STAFF ANALYSIS: On February 1, 1999, Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements, established rate caps for 0+ intraLATA calls placed from payphones and calls made in a call aggregator context. USLD's tariff included a payphone surcharge in addition to the per-minute rate (\$0.30) and the person-to-person (\$3.25) or non person-to-person (\$1.75) surcharges. For calls where the payphone surcharge was applied, the cumulative cost of the surcharges exceeded the Commission's rate caps. USLD had revised its tariff and changed its rates at the time Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements, went into effect. However, USLD failed to take into consideration the \$0.25 payphone surcharge when it modified its tariff. The company has now revised its tariff to remove the payphone surcharge and ceased billing customers for the payphone surcharge on March 31, 2000. On April 3, 2000, USLD

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provided detailed information in response to staff's letter and stated that approximately 115,758 calls were overcharged a total of \$29,939.59.

In its letter to staff, USLD requested that it be permitted to make a contribution to the General Revenue Fund in lieu of refunding each individual customer. USLD states that due to a change in its record keeping system, it is only able to provide call detail for the period May 1, 1999 - March 30, 2000. Putting this into perspective, USLD has call detail records for eleven of the fourteen months that it overcharged customers for 0+ intraLATA calls. In addition, USLD states that the costs to refund each individual customer would far outweigh the refund amount.

As the Commission is aware, staff conducted an extensive investigation, including a review of all interexchange companies' tariffs, plus routine test calls from payphones. The purpose of the investigation and test calls was to identify operator services providers and to determine if the operator services providers were in compliance with the rate caps established in Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements. As a result of these efforts, staff has presented twelve recommendations concerning refunds of operator services overcharges to the Commission during the past year. Proposed refund amounts varied between \$429.37 and \$87,088.50. USLD is the only operator services provider that has requested it be permitted to make a contribution to the State of Florida General Revenue Fund in lieu of refunding monies to the affected customers.

Staff recognizes that many customers may no longer be identified because the overcharges first began on February 1, 1999, and the result may be that a significant portion of the monies to be refunded will ultimately be remitted to the General Revenue Fund. However, other operator services providers found to have overcharged, have attempted to make refunds to the individual customer. It is staff's belief that USLD should also make an effort to refund each individual customer that it can identify and only submit the unrefundable monies, plus interest, to the General Revenue Fund. Customers are entitled to receive the benefit of the refund.

Based on the foregoing, staff recommends that the Commission should not accept USLD Communications, Inc.'s request that it be permitted to make a contribution of \$28,939.59, plus \$3,088.29 interest, as required by Rule 25-4.114, Florida Administrative Code, Refunds, for a total of \$32,027.88, to the General Fund in lieu of refunds to individual customers who were overcharged for

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intrastate 0+ calls made from pay telephones and in a call aggregator context from February 1, 1999, through March 31, 2000. The Commission should order USLD Communications, Inc. to credit customers' local exchange telephone bills beginning September 1, 2000, and ending November 30, 2000, for overcharging end users on intrastate 0+ calls made from pay telephones and in a call aggregator context from February 1, 1999, through March 31, 2000. By December 10, 2000, USLD Communications, Inc. should remit any unrefundable amount, including interest, to the Commission for forwarding to the Comptroller for deposit in the General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. USLD Communications, Inc. should submit a final report as required by Rule 25-4.114, Florida Administrative Code, Refunds, by December 10, 2000. If the company fails to issue the refunds in accordance with the terms of the Commission's Order, the company's certificate should be canceled, and this docket should be closed.

ISSUE 3: Should the Commission accept the \$5,000 settlement offer proposed by USLD Communications, Inc. to resolve the apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. The Commission should accept the company's \$5,000 settlement proposal to resolve the apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution 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 the settlement offer, the company's certificate should be canceled, and this docket should be closed. **(Kennedy)**

STAFF ANALYSIS: Staff opened Docket No. 000036-TI on January 11, 2000, after the company did not respond to staff's May 25, 1999 letter. The letter was signed for and received on May 27, 1999. Staff contacted the company several times via telephone to prompt a response to the requested information. The company did not provide a response.

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Therefore, on January 20, 2000, staff filed a recommendation to order USLD to show cause why it should not be fined \$10,000 or have its certificate canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. Prior to the February 1, 2000, Agenda Conference, USLD requested a deferral of this item in order to investigate why a response was not provided and to gather the information necessary to comply with staff's request. On March 17, 2000, and April 3, 2000, USLD provided the appropriate information necessary to compute the interest due on the apparent overcharges. In addition, on May 17, 2000, USLD submitted its offer of settlement. In its settlement offer, USLD agreed to the following:

- USLD will make a contribution of \$5,000 to the General Revenue Fund of the State of Florida, with no admission of liability or wrongdoing.

Staff supports USLD's proposal to timely respond to staff's inquiries. Staff believes as a certificated telecommunications company, USLD should continue to adhere to the rules of the Florida Public Service Commission.

Therefore, staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable and supports the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, in the amount of \$5,000. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution 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, and this docket should be closed.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: No. If no person, whose interests are substantially affected by the proposed action files a protest of the Commission's decision on Issues 1 and 2 within the 21 day protest period, the Commission's Order will become final upon issuance of a consummating order. The Commission's actions on Issues 1 and 2 should not have impact on action taken on Issue 3, nor should a protest of either Issue 1 or 2 impact the effectiveness of the Commission's decision on Issue 3. This docket should, however, remain open pending the completion of the refund, receipt of the final report on the refund, and remittance of the \$5,000 voluntary contribution. After completion of the refund, receipt of the final refund report, and remittance of the \$5,000 voluntary contribution, this docket may be closed administratively. If the company fails to complete the refund or to pay the settlement contribution, this docket may be closed upon cancellation of USLD Communications, Inc.'s certificate. **(B. Keating)**

STAFF ANALYSIS: If no person, whose interests are substantially affected by the proposed action files a protest of the Commission's decision on Issues 1 and 2 within the 21 day protest period, the Commission's Order will become final upon issuance of a consummating order. The Commission's actions on Issues 1 and 2 should not have impact on action taken on Issue 3, nor should a protest of either Issue 1 or 2 impact the effectiveness of the Commission's decision on Issue 3. This docket should, however, remain open pending the completion of the refund, receipt of the final report on the refund, and remittance of the \$5,000 voluntary contribution. After completion of the refund, receipt of the final refund report, and remittance of the \$5,000 voluntary contribution, this docket may be closed administratively. If the company fails to complete the refund or to pay the settlement contribution, this docket may be closed upon cancellation of USLD Communications, Inc.'s certificate.

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July 6, 2000

Ms. Kelly Biogalski
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Pay Telephone Evaluation-USLD

Dear Kelly:

As we discussed, I will summarize here the correspondence between USLD and Staff concerning past inadvertent overcharges which occurred on some of USLD's pay telephones in Florida. During an evaluation Staff observed pay telephone charges that exceeded the cap that the Commission imposed in February, 1999. The questions that Staff asked USLD to assess were:

1. What was the total amount of the overcharges?
2. For what period of time were payphone customers overcharged?
3. How many customers were affected?
4. How does USLD propose to return the amount of overcharges to customers?

USLD determined that its base tariff conformed to the cap, but that a \$.25 set fee that was intended to apply to local calls was inadvertently being applied to both local and intraLATA calls, causing each intraLATA call to exceed the cap by the amount of the \$.25 set fee. The set fee was discontinued in March, 2000 (after a delay caused by an internal miscommunication).

Because USLD changed accounting systems in May of 2000, USLD does not have actual data for the calls made during the period February 1, 1999 - April 30, 1999. Accordingly, when calculating the amount of overcharges USLD reviewed actual data for the period May 1, 1999 - March 30, 2000, then estimated the overcharges for the earlier period based on the assumption that the volume during those months was similar to the volume during the period for which USLD has actual data.

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USLD's records show that during the period May 1, 1999 through March 30, 2000, customers made a total of 161,589 intraLATA calls on USLD payphones. However, as it develops, only a portion of USLD's payphones were programmed to apply the \$.25 set fee. Of this total only 90,953 calls were charged the \$.25 set fee. Accordingly, for the period overcharges amounted to \$22,738.25.

By calculating the average number of calls that received the set fee per month during the period May 1999 - March 2000, and applying the average to the period February - April 1999, USLD estimates that the total overcharge for the entire period of February 1999 - March 2000 was \$28,939.59.

During our conversations we discussed the manner in which USLD would rectify the inadvertent overcharges. You informed us that Staff's position is that USLD should make refunds to the individual customers who paid the overcharges.

Under anything like normal circumstances USLD would agree. However, when assessing the relationship between the amounts owed to each customer and in the aggregate, on the one hand, with the administrative costs associated with returning the money to the individual customers, on the other, at some point one must conclude that the limited benefits to be derived do not warrant the substantial costs that would have to be incurred to achieve the preferred result. In this situation each customer was inadvertently overcharged twenty-five cents--the amount of the tariffed set fee that caused USLD's tariff to exceed the overall rate cap then in place-- each time a customer made a call from a payphone. (As you know, to correct the problem USLD discontinued the application of the set fee to both local and intraLATA calls. The set fee was discontinued as to both categories in order to eliminate the problem accruing to one of them because of the inability to differentiate between each type.) Based on past experience, USLD estimates that its billing service company would charge between \$34,000 and \$40,000 to implement the refund to individual customers. This does not take into account the time and the approximately \$16,000 of charges that would have to be incurred to identify the customers and the amounts owed to each. Altogether, to identify individual customers and refund individual overcharges would cost nearly twice the amount of the total overcharges. (Because USLD does not have records for the period February - April, 1999 that would enable USLD to identify individual customers, that portion of the overcharges would have to be contributed instead of refunded in any event.)

For these reasons, USLD respectfully submits that to require individual refunds in this instance would not be a reasonable or cost-effective approach. USLD requests that

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it be permitted to make a contribution to the General Fund in lieu of refunds to individual customers.

You also conveyed Staff's view that USLD did not respond adequately or timely to Staff's inquiries. To be clear, USLD does not concede that USLD's actions in responding to Staff constitute a violation of rules or regulations for which a penalty could be assessed. The unavailability of certain records and the departure from the Company - well into the internal investigation-of the employee to whom the task of preparing the report had first been assigned complicated USLD's ability to provide complete answers to Staff's questions. Based on correspondence, it appears to USLD that at one point there may have been miscommunication between Staff and the individual with whom Staff was in contact regarding USLD's need for more time within which to respond. However, while USLD attempted in good faith to be responsive to your request, USLD acknowledges that delays occurred, and more time was required to provide Staff with all of the information it requested than Staff expected-and more than USLD intended. In the spirit of settlement, and without conceding that any grounds exist that would justify the imposition of a penalty, USLD offers to contribute \$5,000 to the General Fund. This offer is contingent on acceptance of this amount in full settlement of any issues associated with Staff's evaluation of USLD's pay telephone charges during the period February, 1999 - March 2000 and USLD's responses thereto. However, the offer is not conditioned on approval of USLD's request for authority to remit the amount of inadvertent overcharges to the General Fund rather than incur the cost of refunds to individual customers.

Yours truly,



Joseph A. McGlothlin

JAM/kr