

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: November 18, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Buys)
Office of the General Counsel (Scott)

RE: Docket No. 041205-TX – Compliance investigation of DSL Internet Corporation d/b/a DSLi for apparent violation of Rules 25-4.082, F.A.C., Number Portability, Rule 25-4.083, F.A.C., Preferred Carrier Freeze, and 25-118, F.A.C., Local, Local Toll, or Toll Provider Selection.

AGENDA: 11/30/04 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\041205.RCM.DOC

Discussion of Issues

Issue 1: Should the Commission order DSL Internet Corporation d/b/a DSLi to immediately remove all Preferred Carrier Freezes placed on its customers' accounts for which the company does not possess valid authorizations pursuant to Rule 25-4.083, Florida Administrative Code, Preferred Carrier Freeze, and facilitate porting of subscribers telephone numbers upon request from acquiring companies pursuant to Rule 25-4.082, Florida Administrative Code, Number Portability?

Recommendation: Yes. (Buys, Scott)

Staff Analysis: Rule 25-4.082, Florida Administrative Code, (F.A.C.), Number Portability, requires that (1) the serving local provider shall facilitate porting of the subscriber's telephone number upon request from the acquiring company, (2) a working number shall be ported

regardless of whether a balance is owed, and (3) a local provider shall not disconnect a subscriber's working number, regardless of whether a balance is owed.

Rule 25-4.083, F.A.C., Preferred Carrier Freeze, prohibits a company from placing Preferred Carrier (PC) Freezes on customers' accounts without the customers' authorization or requiring that a PC Freeze be a condition of obtaining service. A complete citation of Rules 25-4.082 and 25-4.083, F.A.C. is included in Attachment A.

In late September 2004, staff became aware that DSL Internet Corporation d/b/a DSLi (DSLi) is apparently imposing local Preferred Carrier (PC) Freezes on the accounts of its customers without their authorization. Staff determined that a number of customers presubscribed to Premier Telecom, Inc. (Premier) for long distance service and DSLi for local service desired to switch their local service from DSLi to Premier. Premier claimed that while operating as an agent for DSLi, DSLi would only provide local service for Premier's customers if a local service PC freeze was imposed. Premier also reported that DSLi is informing customers who request that the local PC Freezes be removed so that they may switch from DSLi to Premier, that removal of the local PC Freeze will result in the customers losing their telephone numbers. It is staff's understanding that Premier was an agent for DSLi; Premier collected payment from the customers, provided customer service, and performed the marketing and verification on behalf of DSLi. Premier provided its customers with long distance service and DSLi provided the local exchange service. However, some of Premier's customers wanted to switch from DSLi to Premier for their local exchange service.

Staff notified DSLi that its actions appear to be in violation of Rules 25-4.082, and 25-4.083, F.A.C., in its letter dated October 14, 2004. Further, in a conference call with DSLi on October 6, 2004, staff informed DSLi that it must remove any unauthorized PC Freezes on its customers' accounts for which it does not possess a valid authorization and allow any customer to port to the service provider of his/her choice. DSLi confirmed that it understood and would comply with the rules.

DSLi's Position: In its letter dated October 29, 2004, DSLi maintains that it does not hold any freezes on customers' accounts where the customers have forwarded DSLi a written request confirming their desire to port to another carrier. In addition, DSLi asserts that it has neither instructed its staff to refuse to port, nor is DSLi aware of any circumstances where it has refused to port a working number when such was requested by a customer. All customers who have forwarded DSLi a written request to port to another carrier do not have a PC Freeze on their line and are free to port away. At no time have DSLi employees made statements, nor is it company policy, that a customer will lose dial tone when switching from DSLi to another carrier.

DSLi reported that it has attempted to retrieve its customers' authorizations for the PC Freezes from Premier with no response. During the period of time Premier was acting as an agent for DSLi, Premier was responsible for obtaining and retaining the appropriate customer authorization documentation for DSLi's local service. As an agent for DSLi, Premier was advised that DSLi routinely extends its customers a local and long distance freeze service, to avoid customers being 'slammed' by other providers.

Staff Analysis: Since October 4, 2004, the Commission received over 40 complaints against DSLi for placing PC Freezes on customers' accounts. The majority of the complaints are from Premier customers who wish to switch their local service from DSLi to Premier. Those complaints are pending resolution and closure. As the local exchange service provider, DSLi is responsible for obtaining and retaining the customers' authorizations for PC Freezes. As of November 10, 2004, DSLi has not provided staff with proof that its customers' authorized DSLi to place PC Freezes on their accounts.

As this is DSLi's first incidence of problems concerning the removal of unauthorized PC Freezes and porting of customers' numbers to another local exchange company, staff recommends that the Commission not impose a monetary penalty upon DSLi. This is consistent with the Commission's previous actions in Order No. PSC-02-1656-PAA-TX, issued November 26, 2002, Docket No. 020646-TX, In Re: Compliance Investigation of CAT Communications International, Inc., for apparent violation of Rule 25-4.110(16), F.A.C., Customer Billing for Local Exchange Telecommunications Companies, wherein the Commission Ordered CAT Communications International, Inc. to remove local service freezes placed on customers' accounts, but did not impose a monetary penalty on the company.

Accordingly, staff recommends that the Commission should order DSL Internet Corporation d/b/a DSLi to immediately remove all Preferred Carrier Freezes placed on its customers' accounts for which the company does not possess valid authorizations pursuant to Rule 25-4.083, Florida Administrative Code, Preferred Carrier Freeze, and facilitate porting of subscribers telephone numbers upon request from acquiring companies pursuant to Rule 25-4.082, Florida Administrative Code, Number Portability. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.01, 364.285, and 364.603, Florida Statutes.

Issue 2: Should the Commission require DSL Internet Corporation d/b/a DSLi to inform customers obtained from US Telecom via letter within 10 days of the Commission's Consummating Order that the customers have an option to switch to another local provider of their choice and that they are under no obligation to continue to receive service from DSLi?

Recommendation: Yes. (Buys, Scott)

DSLi's Position: It is DSLi's position that it has not slammed any customer of US Telecom or any other carrier as explained in its letter dated October 29, 2004. DSLi acquired the customer base of US Telecom on September 3, 2004, after BellSouth suspended service to US Telecom for failure to pay. DSLi claims that as Hurricane Frances was approaching South Florida, these customers would have been without service during the storm. Considering the exigent circumstances under which DSLi provided service to the disconnected US Telecom customers, DSLi believes that it is in the public interest that the Commission waive the requirements of 25.4.118(1), F.A.C. In this case, if prior authorization was required, customers may have failed to respond to a request for authorization, neglected to select another carrier, and possibly lost their long distance service. DSLi believes it acted in response to the emergency situation to protect the public interest and will submit a retroactive request if the Commission so requires.

DSLi reported that it notified all of the customers for whom it attempted to reestablish services and advised them of the process for continuing to adopt local services from DSLi. The customers were not asked to pay for the reestablishment of services nor were they required to pay for the services provided by DSLi prior to the September 10, 2004. DSLi stated that the former US Telecom customers who did not want to reactivate their local services through DSLi were under no obligation to do so. DSLi reported that it requested that the US Telecom customers contact DSLi by September 22, 2004, to confirm if they wanted to continue to receive local service from DSLi.

Staff Analysis: In the week prior to Labor Day, Mr. Frank Johnson of DSLi contacted staff and requested assistance with removing PC Freezes from approximately 600 customers of US Telecom. Mr. Johnson told staff that DSLi had acquired the customer base of US Telecom. It appears that most of the 600 US Telecom customers were switched to DSLi. DSLi did not request a waiver of Rule 25-4.118, F.A.C., Local, Local Toll, or Toll Provider Selection, to transfer those customers from US Telecom to DSLi. In addition, DSLi did not provide staff with proof that DSLi informed US Telecom's customers about the acquisition of their local service.

Although prior Commission approval is not required to transfer US Telecom's customer base to DSLi, it is common practice for the parties to notify the Commission of the transaction, and for the acquiring company to request a waiver of Rule 25-4.118, F.A.C. In this case, the customers have already been transferred and a rule waiver would only protect DSLi from potential slamming infractions stemming from complaints filed by former US Telecom customers. Hence, staff does not believe a retroactive waiver of Rule 25-4.118, F.A.C. is necessary in this case. Further, as this is DSLi's first instance of potential slamming regarding the acquisition of a customer base, staff does not believe a monetary penalty is warranted at this time.

Accordingly, staff recommends that the Commission should require DSLi to inform customers obtained from US Telecom via letter within 10 days of the Commission's Consummating Order that the customers have an option to switch to another local provider of their choice and that they are under no obligation to continue to receive service from DSLi. The Commission is vested with jurisdiction over this matter pursuant to Sections 364.01, 364.285 and 364.603, Florida Statutes.

Issue 3: Should this docket be closed?

Recommendation: Yes. The Order issued from this recommendation will become final and effective upon issuance of a Consummating Order, unless a person whose substantial interests are affected by the Commission's decision files a protest that identifies with specificity the issues in dispute, in the form provided by Rule 28-106.201, Florida Administrative Code, within 21 days of the issuance of the Proposed Agency Action Order. As provided by Section 120.80(13)(b), Florida Statutes, any issues not in dispute should be deemed stipulated. If no person files a protest, this docket should be closed administratively upon issuance of the Consummating Order. Any action by the Commission in this docket should not preempt, preclude, or resolve any matters under review by any other Florida Agencies or Departments.
(Scott)

Staff Analysis: Staff recommends that the Commission take action as set forth in its recommendation.