

MEMORANDUM

September 8, 1998

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (MCKINNEY) *JCM MCB*
RE: DOCKET NO. 980897-TI - INITIATION OF SHOW CAUSE
PROCEEDINGS AGAINST LEAST COST ROUTING, INC. D/B/A LONG
DISTANCE CHARGES FOR VIOLATION OF RULE 25-4.118, F.A.C.,
INTEREXCHANGE CARRIER SELECTION.

99-1205-SC-TI

Attached is an ORDER ON SHOW CAUSE, to be issued in the above-
referenced docket. (Number of pages in order - 6)

JCM/slh
Attachment
cc: Division of Communications
I: 980897or.cb

See 4, 5

1 Cert 9/9/98.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Least Cost Routing, Inc. d/b/a Long Distance Charges for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

DOCKET NO. 980897-TI
ORDER NO. PSC-98-1205-SC-TI
ISSUED: September 9, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER ON SHOW CAUSE

BY THE COMMISSION:

I. BACKGROUND

On February 27, 1996, we granted Least Cost Routing, Inc. d/b/a Long Distance Charges (LDC) certificate number 4402 to provide intrastate interexchange telecommunications service.

Thereafter, from March 26, 1996, through July 15, 1998, the Commission has received 279 consumer complaints against LDC. Of those complaints received, 68 are apparent unauthorized carrier change (slamming) infractions in apparent violation of Rule 25-4.118, Florida Administrative Code. The balance of those complaints are either pending response from the company or closure in the Division of Consumer Affairs.

II. ALLEGED VIOLATIONS

LDC is submitting numerous preferred interexchange carrier (PIC) changes with fraudulently obtained customer verbal authorizations. LDC targets business customers by speaking to unauthorized company employees and misrepresenting themselves using various other company names. The unauthorized PIC changes we reviewed appear to be in violation of Rule 25-4.118, Florida

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Administrative Code. Carrier changes require specific disclosures. Rule 25-4.118 (6) (a) and (b), Florida Administrative Code, requires that the interexchange telecommunications carrier (IXC) shall provide the following disclosures when soliciting a change in service from the customer:

- (a) identification of the IXC
- (b) the purpose of visit or call is to solicit a change of the PIC of the customer

Another apparent violation of Rule 25-4.118, Florida Administrative Code, is that LDC has failed to maintain records of the carrier changes. Rule 25-4.118 (2) (d), Florida Administrative Code, requires:

- (d) Ballots or letters will be maintained by the IXC for a period of one year.

It appears that LDC is submitting numerous preferred interexchange carrier (PIC) changes with apparently fraudulently obtained customer verbal authorizations. LDC seems to be targeting business customers, speaking to unauthorized company employees and misrepresenting themselves using various other company names.

Examples of complaints received from consumers include the following:

On December 17, 1997, Ms. Betty J. Hutchinson sent Consumer Affairs a written complaint that LDC had called, identified itself as Sprint, and offered a discount if she would keep her local service with Sprint. Ms. Hutchinson asked if anything would change in her service (both local and long distance) and the reply was no. This is an apparent violation of Rule 25-4.118 (6) (b), Florida Administrative Code. The next month, she discovered her long distance carrier was changed to LDC. Ms. Hutchinson asserts she authorized no one to change her long distance carrier.

On February 12, 1998, William Koprowski, on behalf of his company, B&T Molded Plywood, reported his company's long distance carrier had changed. Mr. Koprowski asserts the long distance carrier was changed without his knowledge. Additionally, Mr. Koprowski discovered two weeks later that his private residence long distance carrier was switched to LDC without his knowledge.

On February 25, 1998, Ms. Raquel Hernandez, for her company McGaw Export, Inc., filed a complaint with the Commission stating she had been slammed. Someone from LDC had called her, identified himself as a BellSouth employee, and offered a discount of 20% if she stayed with them as their long distance carrier. All she had to do was verify all questions. Ms. Hernandez's long distance carrier was switched to LDC. LDC responded and admitted that Ms. Hernandez was misled.

On March 20, 1998, Mr. Dennis Pirtle, owner of Pirtle Insurance Agency, received a telephone call from John, who identified himself as a BellSouth employee, and offered a discount on Mr. Pirtle's long distance charges. The discount plan was called the Least Cost Routing Plan. The next month, Mr. Pirtle's carrier was changed. Mr. Pirtle asserts he did not authorize LDC to be his long distance carrier.

On May 15, 1998, William and Gayle Keen made a complaint to Consumer Affairs asserting their long distance carrier had been changed without authorization. They stated they had never heard of LDC nor had they authorized them to change their carrier. The Keens wrote a letter to the FCC demanding fraud protection.

LDC responded to some of the slamming complaints by stating that it received third party verification authorization. However, LDC did not provide letters of authorization (LOAs) or Tapes any of the complaints. Failure to maintain LOAs is an apparent violation of Rule 25-4.118 (2) (d), Florida Administrative Code. Further, since some customers allege that LDC did not identify itself or the intent of its call, these complaints give the appearance that LDC is in apparent violation of Rule 25-4.118 (6)(a) and (b), Florida Administrative Code, and is operating in a willful and deceptive manner.

LDC has not satisfied this Commission that it is in compliance with our rules. Pursuant to Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes.

Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Based on the numerous complaints received from consumers, and LDC's unsupported claims of customer third party verification, we find that LDC is in apparent violation of Commission rules and has not established sufficient safeguards to protect consumers from unauthorized carrier changes. We also find that LDC's apparent conduct of switching PICs without customer authorization has been "willful" in the sense intended by Section 364.285, Florida Statutes.

III. CONCLUSION

Upon consideration, and based on 68 apparent unauthorized carrier change infractions, we conclude that LDC does not have adequate safeguards to protect consumers from unauthorized carrier changes. Accordingly, we hereby order LDC to show cause in writing within 21 days of the effective date of this Order why it should not be fined \$10,000 per infraction for a total of \$680,000 or have its certificate canceled for its apparent violations of Rule 25-4.118, Florida Administrative Code.

If LDC timely responds to this Order, this docket will remain open pending resolution of the show cause proceeding. If LDC does not respond to the Commission's Order to Show Cause, the fines will be deemed assessed. If LDC fails to respond to this Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, LDC's certificate will be canceled. Any collected fine monies 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that LDC show cause in writing within 21 days of the issuance date of the order why it should not be fined \$10,000 per apparent violation for a total of \$680,000 or have its certificate canceled for apparent

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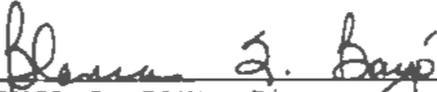
failure to comply with Rule 25-4.118, Florida Administrative Code.
It is further

ORDERED that failure to respond to this Order to Show Cause in the manner and date set forth in the Notice of Further Proceedings and Judicial Review section of this Order will constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and will result in the automatic assessment of the fines indicated in the body of this Order. It is further

ORDERED that the Commission shall forward any payment of fines to the Office of the Comptroller for deposit in the state General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. It is further

ORDERED that if Least Cost Routing, Inc. d/b/a Long Distance Charges fails to respond to this Order and does not pay the fines within five business days after the expiration of the show cause period, its certificate shall be canceled and this docket shall be closed.

By ORDER of the Florida Public Service Commission this 9th day of September, 1998.



BLANCA S. BAYO, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this show cause order may file a response within 21 days of issuance of the show cause order as set forth herein. This response must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 30, 1998.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.