



# 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-

RECORDS AND  
REPORTING

00 JAN 20 AM 11:47

RECEIVED-FPSC

**DATE:** JANUARY 20, 2000

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

**FROM:** DIVISION OF LEGAL SERVICES (KEATING) *pk*  
DIVISION OF COMMUNICATIONS (BIEGALSKI) *KB RNT*

**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

**AGENDA:** 2/1/00 - REGULAR AGENDA - ISSUE 1 - SHOW CAUSE - ISSUE 2 - PROCEDURAL MATTER - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\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. (Attachment A, Page 6-8)
- May 27, 1999 - USLD signed for and received the certified letter. (Attachment B, Page 9)
- June 28, 1999, through October 1, 1999 - Staff contacted USLD in order to obtain the requested information.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

DOCKET NO. 000036-rI  
DATE: January 20, 2000

- January 13, 2000 - To date, staff has not received a response to its certified letter.

### DISCUSSION OF ISSUES

**ISSUE 1:** Should USLD Communications, Inc. be ordered to show cause why a fine of \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries should not be imposed or Certificate Number 2469 should not be canceled?

**RECOMMENDATION:** Yes. The Commission should order USLD to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have Certificate Number 2469 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact or law. If USLD fails to respond to the show cause, and the fine is not paid within 10 business days after the 21 day show cause period, certificate number 2469 should be canceled. If the fine is paid, it should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(Biegalski)**

**STAFF ANALYSIS:** Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, states:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Staff sent a certified letter to USLD on May 25, 1999, and requested a written response by June 9, 1999. The letter was signed for and received by USLD on May 27, 1999. In addition, staff contacted USLD on numerous occasions in order to discuss requested information. USLD stated it would submit a response by October 4, 1999. To date, staff has not received a response from USLD. In this regard, it appears that USLD is in violation of Rule 25-4.043, Florida Administrative Code.

By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, 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).

Staff believes that USLD's conduct in failing to respond to Commission staff's inquiries in apparent violation of Commission Rule 25-4.043, Florida Administrative Code, has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as USLD's conduct in issue here, would meet the standard for a "willful violation."

Accordingly, staff recommends that the Commission order USLD to show cause in writing within 21 days of the issuance of the Commission's Order why it should not have Certificate Number 2469 canceled or be fined \$10,000 for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. The company's response should contain specific allegations of fact or law. If USLD fails to respond to the show cause, and the fines are not paid within 10 business days after the 21 day show cause period, Certificate Number 2469 should be canceled. If the fines are paid, they should be remitted by the Commission to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

**ISSUE 2:** Should the Commission order USLD Communications, Inc. to provide a written response addressing the questions in staff's May 25, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's order?

**RECOMMENDATION:** Yes. The Commission should order USLD to provide a written response addressing the questions in staff's May 25, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's order. If the information is not provided in accordance with the Commission Order, a show cause proceeding may be initiated. **(Biegalski)**

**STAFF ANALYSIS:** On May 25, 1999, staff mailed a letter to USLD requesting information related to the operator service provider rates in its tariff as it relates to the billing received for test calls made during a routine service evaluation. Staff requested a response by June 9, 1999. The letter was signed for and received on May 27, 1999. In addition, staff has contacted USLD on numerous occasions to discuss the requested information, but to date, staff has not received a response.

Therefore, the Commission should order USLD to provide a written response addressing the questions in staff's May 25, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's Order. If the information is not provided in accordance with the Commission Order, a show cause proceeding may be initiated. should order USLD to provide the information requested in staff's May 25, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's order.

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

**RECOMMENDATION:** If staff's recommendation in Issue 1 is approved, then USLD will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not have its certificate canceled or be fined in the amount proposed. If USLD timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. This docket should also remain open pending the receipt of the information requested in staff's May 25, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's Order.

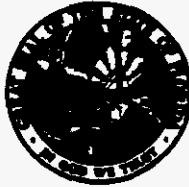
Staff recommends that if USLD fails to respond to the Order to Show Cause, and the fine is not received within ten business days after the expiration of the show cause response period, the company's certificate should be canceled. If the requested information is not provided within ten business days of the issuance of the Commission's Order, this docket should remain open pending the initiation of further show cause proceedings. If USLD provides the requested information, and pays the fine recommended in Issue 1, this docket should be closed. (Keating)

**STAFF ANALYSIS:** If staff's recommendation in Issue 1 is approved, then USLD will have 21 days from the issuance of the Commission's show cause order to respond in writing why it should not have its certificate canceled or be fined in the amount proposed. If USLD timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. This docket should also remain open pending the receipt of the information requested in staff's May 25, 1999, correspondence (Attachment A) within ten business days of the issuance of the Commission's Order.

Staff recommends that if USLD fails to respond to the Order to Show Cause, and the fine is not received within ten business days after the expiration of the show cause response period, the company's certificate should be canceled. If the requested information is not provided within ten business days of the issuance of the Commission's Order, this docket should remain open pending the initiation of further show cause proceedings. If USLD provides the requested information, and pays the fine recommended in Issue 1, this docket should be closed.

STATE OF FLORIDA

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



DIVISION OF  
TELECOMMUNICATIONS  
WALTER D'HAESELEER  
DIRECTOR  
(850) 413-6600

## Public Service Commission

May 25, 1999

### CERTIFIED LETTER

Ms. Kim Logue  
USLD Communications, Inc.  
% LCI International Telecom Corp.  
4250 North Fairfax Drive (12W002)  
Arlington, Virginia 22203

Dear Ms. Logue:

The Commission's engineering staff routinely evaluates pay telephones for compliance with the Commission's rules. Direct dialed credit card calls are made to determine the call timing and billing accuracy.

Accordingly, the following items on the attached April 13, 1999 billing does not conform with the Commission's operator service provider rate cap as set forth in Rule 25-24.630, Florida Administrative Code.

Please provide a written response by June 9, 1999 to the following questions:

1. What caused the apparent overcharge?
2. How long has this location been overcharging?
3. How many calls have been overcharged?
4. What corrective measures have been implemented to prevent future overcharges?
5. What method of refunding the overcharged customers do you propose?

Ms. Kim Logue  
Page 2  
May 25, 1999

Should you discover other locations are overcharging, please provide the information requested in questions 2 through 5 for these locations.

If you have any questions, please contact me at (850) 413-6504.

Sincerely,



Barbara H. Bailey  
Research Assistant

Attachment  
Record No. 4281

LEAFPLUS DEALING, INC.

850-413-6612 (500)  
APRIL 13, 1999

FOR BILLING INQUIRIES, CALL 1-888-888-8734.

**SUMMARY OF CURRENT CHARGES**

LONG DISTANCE CHARGES  
TAXES

SEE DETAIL  
SEE DETAIL

16.83  
1.13

**TOTAL CURRENT CHARGES 17.96**

**LONG DISTANCE CHARGES**

CALLED ON BEHALF OF		US LONG DISTANCE		NUMBER CALLED FROM PLACE		FROM NUMBER CODE		MIN	AMOUNT
REF	DATE	TIME	PLACE CALLED						
24	FEB 23	05:30:04pm	TALLAHASSEE FL	850-413-6612	STPETERESB FL	727-828-9134	ADC	2.0	2.75
25	MAR 04	10:42:48am	TALLAHASSEE FL	850-413-6612	NAPLES FL	941-774-3407	ADC	2.0	2.60
26	MAR 08	11:51:00am	TALLAHASSEE FL	850-413-6612	STPETERESB FL	727-398-8972	ADC	2.0	2.60
27	MAR 10	08:58:09am	TALLAHASSEE FL	850-413-6612	MOFT MYERS FL	941-998-7340	ADC	1.0	1.23
28	MAR 11	11:18:40am	TALLAHASSEE FL	850-413-6612	NCAPECORAL FL	941-874-9065	ADC	2.0	2.60
29	MAR 16	03:48:04pm	TALLAHASSEE FL	850-413-6612	FORT MYERS FL	941-939-1183	ADC	2.0	2.60
30	MAR 18	12:27:32pm	TALLAHASSEE FL	850-413-6612	FORT MYERS FL	941-934-4348	ADC	2.0	2.60

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Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**  
■ Complete items 1 and/or 2 for additional services.  
■ Complete items 3, 4a, and 4b.  
■ Print your name and address on the reverse of this form so that we can return this

I also wish to receive the following services (for an extra fee):

USLD Communications, Inc.  
Ms. Kim Logue  
c/o LCI International Telecom Corp.  
4250 North Fairfax Drive (12W002)  
Arlington, VA 22203

Addressee's Address  
Restricted Delivery  
postmaster for fee.

*242583062*

Certified  
 Insured

Merchandise  COD

*5/27/99*

5. Received By: (Print Name)  
*Kim Logue*

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)  
X *Kim Logue*

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.