**FLORIDA 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**

 **MARCH 26, 1998**

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

**FROM: DIVISION OF COMMUNICATIONS (ISLER)**

**DIVISION OF LEGAL SERVICES (COX)**

**RE: DOCKET NO. 971648-TI - LONG DISTANCE DIRECT, INC. - INITIATION OF SHOW CAUSE PROCEEDINGS FOR VIOLATION OF RULES 25-4.043, F.A.C., RESPONSE TO COMMISSION STAFF INQUIRIES, 25-4.118, F.A.C., INTEREXCHANGE CARRIER SELECTION, AND 25-24.485(1)(I), F.A.C., TARIFFS**

**AGENDA: APRIL 7, 1998 - REGULAR AGENDA - SHOW CAUSE - INTERESTED PERSONS MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\971648TI.RCM**

 **CASE BACKGROUND**

Long Distance Direct, Inc. (LDDI) is a provider of interexchange telecommunications services, holder of certificate number 3524, and was certificated on February 28, 1994.

On October 28, 1996, staff received a consumer complaint from Days Inn OceanFront Resort (Days Inn) in Jacksonville. The consumer alleged that LDDI switched the hotels long distance service without proper authorization. In addition, the consumer advised staff that it had operator screening, yet LDDI billed the hotel for operator assisted calls. Initially, it was staff's understanding that Days Inn only requested credit for all operator assisted calls. Staff contacted LDDI and requested a response by November 19, 1996.

On December 10, 1996, LDDI responded to staff that Pam Dolan, Days Inns bookkeeper, authorized the switch on August 22, 1994, which was verified by an independent 3rd party verifier. LDDI also advised that Days Inn was mailed a Welcome Kit on September 15, 1994, which included a toll-free number to call if the customer did not wish to switch. LDDI also indicated that on at least two other occasions, Ms. Dolan was contacted by LDDI, and both times Ms. Dolan advised that she was satisfied with LDDIs service. LDDI advised staff that Daniel Blankenship requested cancellation of service on November 27, 1996 on behalf of Days Inn. LDDI concluded that since the customer had used the service, received and paid bills for 18 months, Days Inn is responsible for outstanding charges totaling $176.37.

Staff had several other contacts with LDDI before the company stopped responding to staffs inquiries. Staff wrote LDDI on June 20, 1997 and followed up with a telephone call on July 7, 1997. As of this date, the company has failed to respond despite a verbal promise to provide a written response. In addition, staff has had many contacts with Days Inn and BellSouth Telecommunications, Inc., in an attempt to resolve Days Inn's complaint. Based upon the facts known, it is staff's opinion that LDDI has violated Commission rules. Therefore, staff believes the following recommendations are appropriate.

 **DISCUSSION OF ISSUES**

**ISSUE :** Should the Commission order Long Distance Direct, Inc. to show cause why it should not have Certificate Number 3524 canceled or be fined $1,500 for apparent failure to comply with Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

**RECOMMENDATION:** Yes. The Commission should order Long Distance Direct, Inc. to show cause in writing within 20 days of the issuance of the show cause order why it should not have its certificate canceled or be fined $1500 for apparent failure to comply with Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. 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. (Isler)

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

The necessary replies to inquiries propounded by the Commissions 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 was in contact with LDDI several times during the pendency of this complaint. LDDI responded after the 15 days each time except twice. One time LDDI responded timely and the other, LDDI did not respond at all to staff's letter.

For example, staff initially wrote LDDI on November 4, 1996, and requested a response by November 19, 1996. LDDIs response was received December 10, 1996. Staffs follow up request for additional information was mailed on December 13, 1996, and a response was requested by December 30, 1996. LDDIs response was received on January 7, 1997. The company appears to have chosen to ignore staffs follow up correspondence. Therefore, staff believes the show cause order is appropriate.

**ISSUE :** Should the Commission order Long Distance Direct, Inc. to show cause why it should not have Certificate Number 3524 canceled or be fined $10,000 for apparent failure to comply with Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection?

**RECOMMENDATION:** Yes. The Commission should order Long Distance Direct, Inc. to show cause in writing within 20 days of the effective date of the order why it should not have its certificate canceled or be fined $10,000 for apparent failure to comply with Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection. 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. (Isler)

**STAFF ANALYSIS:** Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, states:

(1) The primary interexchange company (PIC) of a customer shall not be changed without the customers authorization. A local exchange company (LEC) shall accept PIC change requests by telephone call or letter directly from its customers.

(6) The IXC shall provide the following disclosures when soliciting a change in service from a customer:

(a) Identification of the IXC;

(b) That the purpose of visit or call is to solicit a change of the PIC of the customer;

(c) That the PIC can not be changed unless the customer authorizes the change; and

(d) Any additional information as referenced in Rule 25-24.490(4).

On October 28, 1996, staff received a consumer complaint from Days Inn OceanFront Resort (Days Inn) in Jacksonville. The consumer alleged that LDDI switched the hotels long distance service without proper authorization. In addition, the consumer advised staff that it had operator screening, yet LDDI billed the hotel for operator assisted calls. Initially, it was staff's understanding that Days Inn only requested credit for all operator assisted calls. At a later date, Days Inn informed staff that LDDI was not charging the rates listed in its tariffs.

On November 4, 1996, staff wrote LDDI and requested an investigation and response by November 19, 1996. LDDI's response was received on December 10, 1996. The company stated that the hotel's bookkeeper, Pam Dolan, authorized the switch on August 22, 1994, and that the switch was verified by an independent 3rd party. LDDI advised staff that Days Inn was mailed a Welcome Kit on September 15, 1994 that included a toll free number to call if the customer did not wish to switch. LDDI also advised that Daniel Blankenship, a representative of Days Inn, requested cancellation of service on November 27, 1996. LDDI concluded that since the customer had used the service, received, and paid bills for 18 months, Days Inn was responsible for outstanding charges totaling $176.37. According to LDDI, the total outstanding amount has increased to approximately $2,470, which includes interest and late payment charges.

In follow up contacts with LDDI, the company provided staff with copies of its telemarketing script (ATTACHMENT A), 3rd party independent verifier script (ATTACHMENT B), and a transcription of the 3rd party independent verification call between the verifier and Ms. Pam Dolan of Days Inn (ATTACHMENT C).

The companys telemarketing script states, in pertinent part:

I am calling from Long Distance Direct regarding a rate reduction program using the AT&T Network.

In staffs opinion, to be in compliance with Commission Rule 25-4.118(6)b), Florida Administrative Code, the company should have stated:

I am calling from Long Distance Direct and the purpose of my call is to solicit a change of your long distance carrier.

LDDIs script goes on to state:

I am with Long Distance Direct a reseller of AT&T Network Services and would like to tell you about a rate reduction program utilizing the AT&T Network. The program allows you to use the AT&T Network and receive rates that are 15%-18% lower than what AT&T can offer you directly.

In that one sentence, the telemarketer uses AT&Ts name four times and uses its own name only once. Staff can certainly understand how a consumer could believe that they are speaking with a representative of AT&T.

The company also provided staff with its 3rd party verification script (ATTACHMENT B) and a transcript of the 3rd party verification call between Ms. Pam Dolan of Days Inn and the verifier (ATTACHMENT C). The following are direct quotes from the companys transcript:

Pam: and this isnt going to interfere with our other carrier?

Ver: No.

Pam: In any way.

Ver: Just, will be just discontinuing on these lines that you have on this line that you have on AT&T. (sic) It wont interfere with your other carrier at all.

Pam: Okay.

Ver: Okay, thats about all the information I need. My name is Anne Annason, Im with Long Distance Direct. Youll start to receive your savings in about thirty days. Youll be receiving your bill directly from the AT&T Bill Manager Service and if you have any questions, you can just call 800 number on your bill. Thanks again for your time.

It is staffs opinion from the transcript that the 3rd party verifier did not use the script, and that it appears Ms. Dolan was verifying that she was not changing Days Inns long distance carriers. We conclude that the required verification did not occur and, therefore, recommend that LDDI show cause why it should not be fined or cancelled for its alleged rule violation.

**ISSUE :** Should the Commission order Long Distance Direct, Inc. to show cause why it should not have Certificate Number 3524 canceled or be fined $250 for apparent failure to comply with Rule 25-24.485(1)(I), Florida Administrative Code, Tariffs?

**RECOMMENDATION:** Yes. The Commission should order Long Distance Direct, Inc. to show cause in writing within 20 days of the effective date of the order why it should not have its certificate canceled or be fined $250 for apparent failure to comply with Rule 25-24.485(1)(I), Florida Administrative Code, Tariffs. 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. (Isler)

**STAFF ANALYSIS:** Rule 25-24.485(1)(I), Florida Administrative Code, Tariffs, states in pertinent part:

Companies shall charge only the rates contained in their tariffs.

During the pendency of Days Inns complaint, staff learned that Long Distance Direct was not billing according to its tariffs. For example, Section 4.2 of LDDIs tariff states that customers will be billed $0.70 for each directory assistance call. The directory assistance charge applies to each call regardless of whether the directory assistance bureau is able to furnish the requested telephone number. (ATTACHMENT D)

The customers March 12, 1996, bill shows a directory assistance call was $2.21, which appears to be a direct violation of what LDDIs tariff states. (ATTACHMENT E)

In addition, using the same bill as an example, LDDI billed the customer a 7.2 minute direct dialed call to Daytona Beach and charged Days Inn $2.09. LDDIs tariff, Section 4.1.4.A, states the evening rate is $.0618 for the initial 18 seconds and $.0206 for each additional six seconds. (ATTACHMENT F) According to staffs calculations, Days Inn should have been billed $1.48 for the 7.2 minute call, computed as follows:

$.0618 x 1 = $0.06

$.0206 x 69 = $1.42

Total $1.48

Therefore, it is staffs belief the LDDI should be ordered to show cause why it should not be fined or cancelled for its alleged rule violation.

**ISSUE :** If the Commission approves staff's recommendation in Issue 2 or 3, should the Commission order Long Distance Direct, Inc., to show cause in writing why it should not rerate all direct dialed calls, credit or refund the difference between the customers preferred carriers rates, plus interest, and LDDIs rates, credit or refund all directory assistance and operator assisted calls, plus interest, for the entire time that Days Inn was presubscribed to LDDI as its long distance provider, and remove all late payment fees and charges?

**RECOMMENDATION:** Yes, the Commission should order Long Distance Direct, Inc. to show cause why it should not rerate all direct dialed calls, credit or refund the difference between the customers preferred carriers rates, plus interest, and LDDIs rates, credit or refund all directory assistance and operator assisted calls, plus interest, for the entire time that Days Inn was with LDDI, and remove all late payment fees and charges. Therefore, LDDI should be ordered to undertake an analysis of its bills to Days Inn and to provide the results to the Commission within 60 days of the disposition of Issue 2. (Isler)

**STAFF ANALYSIS:** If the change by LDDI is unauthorized, Days Inn is entitled to have its charges rerated to those of its preferred carrier. In addition, credits/refunds should be issued by LDDI for any charges in excess of the amounts set forth in its tariff. Therefore, LDDI should be ordered to undertake an analysis of its bills to Days Inn and to provide the results to the Commission within 60 days of the disposition of Issue 2.

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

**RECOMMENDATION:** If staffs recommendations in Issue 1, 2, or 3 are approved, then Long Distance Direct, Inc. will have 20 days from the issuance of the Commissions show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If Long Distance Direct, Inc. timely responds to the show cause order this docket should remain open pending resolution of the show cause proceeding. If LDDI does not respond to the Commissions Order to Show Cause, the fines should be deemed assessed. Staff recommends that if LDDI fails to respond to the Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, LDDIs certificate should be canceled and this docket should be closed. (Cox)

**STAFF ANALYSIS:** If staffs recommendation in Issue 1 is approved, then Long Distance Direct, Inc. will have 20 days from the issuance of the Commissions show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate canceled. If Long Distance Direct, Inc. timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If LDDI does not respond to the Commissions Order to Show Cause, the fines should be deemed assessed. Staff recommends that if LDDI fails to respond to the Order to Show Cause, and the fines are not received within five business days after the expiration of the show cause response period, LDDIs certificate should be canceled and this docket should be closed.