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State of Florida



Public Service Commission
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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

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

DATE: JUNE 24, 1999

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

FROM: DIVISION OF LEGAL SERVICES (MILLER/BEDELL) *Jam UB*
DIVISION OF COMMUNICATIONS (KENNEDY) *RK*
DIVISION OF CONSUMER AFFAIRS (JOHNSON) *[Signature]*

RE: DOCKET NO. 981643-TP - INITIATION OF SHOW CAUSE PROCEEDING AGAINST USA TELE CORP. FOR VIOLATION OF RULE 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER SELECTION.

AGENDA: 07/06/99 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\981643.RCM

CASE BACKGROUND

- November 16, 1993 - Commission granted USA Tele Corp. (USA) certificate number 3491 to provide intrastate interexchange telecommunications service.
- February 2, 1998, through November 4, 1998, - Commission's Division of Consumer Affairs received 48 complaints against USA, of which 15 were closed as unauthorized carrier change (slamming) infractions in apparent violation of Rule 25-4.118, Florida Administrative Code.

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- November 19, 1998 - Staff opened docket to investigate the apparent slamming violations to determine if a sufficient basis existed to require USA to show cause why it should not be fined or have its certificate canceled, pursuant to Section 364.285, Florida Statutes.
- March 2, 1999 - Staff conducted a meeting with USA to discuss the slamming complaints, to discuss procedures USA could implement to prevent recurrences and to discuss the methods for USA to resolve the issues of this docket.
- May 20, 1999 - Staff submitted recommendation for June 1, 1999, agenda conference. Immediately prior to the agenda, USA notified staff of USA's intention to submit a settlement offer, and the Commission's action on the recommendation was deferred.
- May 28, 1999, through June 10, 1999 - Staff negotiated an agreement with USA and USA submitted an offer of settlement. (Attachment A, Page 5)

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept the settlement offer proposed by USA to resolve the apparent violations of Rule 25-4.118, Florida Administrative Code, Interexchange Carrier Selection?

RECOMMENDATION: Yes. Staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. **(Kennedy)**

STAFF ANALYSIS: On June 10, 1999, USA submitted its offer to settle. In its settlement offer, USA agreed to do the following:

- Discontinue marketing of service in Florida for a period of three years.

- Pay \$2,000 a month for a six month period, for a total contribution of \$12,000.
- In the future, to submit all marketing materials to staff for approval.
- By October 1, 1999, establish a one-call system whereby a complaint call received by the Commission will be warm transferred to USA.

Staff supports USA's proposal to discontinue marketing in Florida for a period of three years. Staff believes that USA's use of questionable telemarketing practices for promoting its product was a major cause of the apparent unauthorized carrier changes. Also, by submitting marketing materials to staff for review prior to use, USA will reduce the likelihood of misrepresenting its product to consumers. Further, staff believes that by establishing a warm-transfer arrangement between it and the Division of Consumer Affairs, USA will be in a better position to effectively respond to consumer complaints.

The company has satisfactorily addressed each of staff's concerns. Therefore, staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support the voluntary contribution to the General Revenue Fund pursuant to Section 364.285(1), Florida Statutes, in the amount of \$12,000. Payment will be submitted in six monthly installments of \$2,000 each with the first payment due on August 1, 1999. Subsequent payments will be submitted by the first day of each month until a total payment of \$12,000 has been submitted. If USA fails to make timely payment, its certificate shall be canceled.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. If staff's recommendation in Issue 1 is approved, this docket should remain open pending the remittance of the \$12,000 voluntary contribution which is to be paid in six equal monthly installments beginning August 1, 1999, and ending January 1, 2000. Upon remittance of the final settlement payment, this docket should be closed. Each settlement payment of \$2,000 should be forwarded to the Office of the Comptroller for deposit in the

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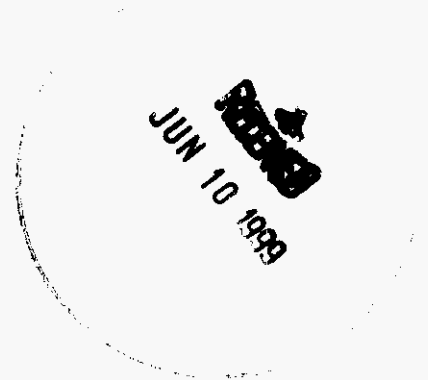
State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If USA fails to make all payments in accordance with the terms in its settlement offer, Certificate Number 3491 shall be canceled. If the certificate is canceled accordingly, any installment payments previously made are non-returnable. **(MILLER/BEDELL)**

STAFF ANALYSIS: If staff's recommendation in Issue 1 is approved, this docket should remain open pending the remittance of the \$12,000 voluntary contribution which is to be paid in six equal monthly installments beginning August 1, 1999, and ending January 1, 2000. Upon remittance of the final settlement payment, this docket should be closed. Each settlement payment of \$2,000 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. If USA fails to make all payments in accordance with the terms in its settlement offer, Certificate Number 3491 shall be canceled. If the certificate is canceled accordingly, any installment payments previously made are non-returnable.

Penn Governmental Affairs, Inc

P.O. Box 221628
Hollywood, Florida 33022-1628
(954) 610-8418

Mr. Ray Kennedy
Florida Public Service Commission
Communications Division
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399



Re: usatelecorp

Dear Mr. Kennedy:

Pursuant to our recent telephone conversation, usatelecorp is highly motivated and is willing to settle this matter in the following manner:

1. Restrict marketing of usatelecorp services for a period of three years.
2. Payment of a \$12,000 fine over a six month period (\$2,000 a month for six months).
3. PSC staff approval of all marketing materials in the future.
4. Establishment of a one-call system whereby a complaint call received by the PSC will be warm transferred to usatelecorp.

I hope this letter brings this matter to a close. You have been more than gracious regarding this matter and your cooperation has been deeply appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Pennavaria, Jr." with a stylized flourish at the end.

Thomas A. Pennavaria, Jr.

cc: usatelecorp