

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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RECORDS AND REPORTING

DATE: October 5, 2000

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

FROM: DIVISION OF LEGAL SERVICES (B. KEATING/VACCARO)
DIVISION OF ECONOMIC REGULATION (D. DRAPER) *DBB*
DIVISION OF COMPETITIVE SERVICES (BUYS) *RM*

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, AND INVESTIGATION AND DETERMINATION OF APPROPRIATE METHOD FOR REFUNDING INTEREST AND OVERCHARGES ON INTRASTATE 0+ CALLS MADE FROM PAY TELEPHONES AND IN A CALL AGGREGATOR CONTEXT. *B/K*

AGENDA: 10/17/00 - REGULAR AGENDA - ISSUE 1 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\000036.RCM

CASE BACKGROUND

- May 18, 1990 - USLD Communications, Inc. (USLD) obtained Florida Public Service Commission Interexchange Telecommunications Certificate Number 2469.
- February 1, 1999 - Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements, was amended to cap rates for intrastate 0+ and 0- calls from pay telephones or a call aggregator context to \$.30 per minute plus \$3.25 for a person-to-person call or \$1.75 for a non person-to-person call.

DOCUMENT NUMBER-DATE

12665 OCT-58

FPSC-RECORDS/REPORTING

- May 25, 1999 - Staff mailed a certified letter to USLD informing it that charges on an April 13, 1999, billing did not conform to the Commission's operator service provider rate cap, and requested answers to questions pertaining to its operator service provider rates listed in its tariff. Staff requested a response by June 9, 1999.
- May 27, 1999 - USLD received and signed for the certified letter.
- June 28, 1999 through October 1, 1999 - Staff contacted USLD on several occasions attempting to obtain the requested information regarding operator service provider rates.
- January 20, 2000 - Staff filed a recommendation to show cause USLD for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.
- January 28, 2000 - USLD requested that Docket No. 000036-TI be deferred from the February 1, 2000 Agenda Conference, so that USLD would have more time to review the allegations in staff's recommendation.
- February 2, 2000 - USLD reported intrastate revenues of \$377,121 on its Regulatory Assessment Fee Return for the period January 1, 1999, through December 31, 1999.
- March 17, 2000 - USLD provided the first written response to staff's initial request, indicating that it had exceeded the Commission's rate caps for operator services, and proposing corrective actions.
- April 3, 2000 - USLD provided a response detailing the methodology it used to estimate overcharges for operator services and the calculated amount of the overcharges.
- July 6, 2000 - USLD submitted a proposed settlement offer in lieu of proceeding with the show cause process.
- July 20, 2000 - Staff filed a recommendation for the August 1, 2000, Agenda Conference, in response to USLD's proposed settlement.

- July 28, 2000 - USLD requested that Docket No. 000036-TI be deferred from the August 1, 2000 Agenda Conference so that it could revise its settlement offer to reflect actual call data rather than estimates.
- September 12, 2000 - USLD submitted a revised proposal for settlement, in which it offered to refund \$33,718.50 to its customers for overcharging end users for pay telephone calls, and contribute \$5,000 to the General Revenue Fund for failing to respond to commission staff inquiries. (Attachment A, Pages 9 and 10)

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept USLD Communications, Inc.'s offer of refund and refund calculation of \$33,718.50, adding interest of \$3,094.87, for a total of \$36,813.37, as required by Rule 25-4.114, Florida Administrative Code, Refunds, for overcharges to end users on intrastate 0+ calls placed from pay telephones and made in a call aggregator context from February 1, 1999, through March 31, 2000?

RECOMMENDATION: Yes. The Commission should accept USLD Communications, Inc.'s offer of refund and refund calculation of \$33,718.50, adding interest of \$3,094.87, for a total of \$36,817.37, as required by Rule 25-4.114, Florida Administrative Code, Refunds, for overcharging end users on intrastate 0+ calls placed from pay telephones and made in a call aggregator context from February 1, 1999, through March 31, 2000. Refunds should be credited to the effected end users' local exchange telephone bill by January 31, 2001. Any money not refunded, including interest, should be remitted to the Commission by July 31, 2001, and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. USLD should be required to submit a preliminary report to the Commission by April 30, 2001, and a final report by July 31, 2001. **(Buys)**

STAFF ANALYSIS: Staff routinely conducts test calls from pay phones to verify that rates charged for intrastate 0+ calls conform to the provider's tariff and comply with the Commission's rate

caps. Staff compared USLD's billed rates for 0+ test calls from pay phones and USLD's tariffed operator service rates to the rate caps established in Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements. Based on this comparison, staff determined that USLD was charging a pay phone surcharge of \$0.25 on intrastate 0+ calls. By adding the pay phone surcharge to the surcharges USLD applied on person-to-person (\$3.25) and non person-to-person (\$1.75) calls, the total cost appeared to exceed the Commission's rate caps.

On May 25, 1999, staff sent USLD a certified letter advising them of the apparent discrepancy and requesting that additional information be provided to staff in a written response by June 9, 1999. On January 20, 2000, staff filed a recommendation to show cause USLD for failure to respond to staff's inquiry regarding operator service rates charged for intrastate 0+ calls placed from pay phones and made in a call aggregator context. Prior to the February 1, 2000, Agenda Conference, USLD requested and was granted a deferral. Since the deferral, staff received correspondence from USLD on March 17, 2000, and again on April 3, 2000 that: (1) confirmed the overcharges were due to a pay phone surcharge; and (2) explained its methodology for estimating the number of calls effected and the total amount of the overcharges.

On July 6, 2000, USLD submitted a settlement offer based on an estimated number of calls. Staff then filed a recommendation for the August 1, 2000, Agenda Conference. Prior to the Agenda Conference, however, USLD was able to access data that was previously unavailable and determine the actual number of calls effected. Hence, USLD requested and was granted a deferral from the August 1, 2000, Agenda Conference, so that USLD could revise its settlement offer to reflect the true number of calls.

USLD subsequently reported that during the period February 1, 1999 through March 31, 2000, a total of 134,874 calls were charged an additional \$0.25 surcharge. Accordingly, the total overcharges amounted to \$33,718.50. On September 12, 2000, USLD submitted an offer to settle this docket (Attachment A, Pages 9, 10). USLD offered to refund the overcharges totaling \$33,718.50 to individual customers by January 31, 2001, and remit the balance to the General Revenue Fund. In previous correspondence, USLD stated that the pay phone surcharge was removed effective March 31, 2000. Test calls made by staff supports USLD's claim that the surcharge has been removed. Staff then used the amount of \$33,718.50 as the basis for calculating an interest charge of \$3,094.87, as required by Rule 25-4.114, Florida Administrative Code, Refunds. The total amount to be refunded is \$36,813.37.

Based on the foregoing, staff recommends that the Commission should accept USLD Communications, Inc.'s offer of refund and refund calculation of \$33,718.50, adding interest of \$3,094.87, for a total of \$36,817.37, as required by Rule 25-4.114, Florida Administrative Code, Refunds, for overcharging end users on intrastate 0+ calls placed from pay telephones and made in a call aggregator context from February 1, 1999, through March 31, 2000. Refunds should be credited to the effected end users' local exchange telephone bill by January 31, 2001. Any money not refunded, including interest, should be remitted to the Commission by July 31, 2001, and forwarded to the Office of the Comptroller for deposit in the General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. USLD should be required to submit to the Commission; a preliminary report by April 30, 2001, and a final report by July 31, 2001.

ISSUE 2: Should USLD Communications, Inc. be required to show cause why it should not pay a fine for over billing of calls in excess of the rate cap established in Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements?

RECOMMENDATION: No. (Buys)

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

USLD has made its offer of refund in response to staff's earlier recommendation to initiate show cause proceedings. USLD corrected the problem and cooperated with staff during the investigation. Moreover, USLD has agreed to refund the overcharges back to its customers. Thus, the purpose of the show cause recommendation has been achieved, and staff believes a show cause order is no longer necessary.

ISSUE 3: Should the Commission accept the \$5,000 settlement offer proposed by USLD Communications, Inc. to resolve the apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

RECOMMENDATION: Yes. The Commission should accept the company's \$5,000 settlement proposal to resolve the apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If USLD fails to pay in accordance with the terms of the settlement offer, the company's certificate should be canceled, and this docket should be closed. The settlement proposal is contingent upon the Commission's approval of staff's recommendation in Issue 1; therefore, if the Commission rejects Issue 1, Issue 2 is rendered moot. **(Buys)**

STAFF ANALYSIS: Staff sent a certified letter to USLD on May 25, 1999, requesting information regarding the apparent discrepancy between USLD's billed rates for 0+ test calls from pay phones compared to the rate caps established in Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements. Staff requested that USLD provide a written response to staff's questions by June 9, 1999. The letter was received and signed for on May 27, 1999. Staff did not receive a response by June 9, 1999. From June 28, 1999, through October 1, 1999, staff called USLD several times to inquire about a response to the requested information. After USLD failed to respond, staff opened Docket No. 000036-TI to initiate show cause proceedings. On January 20, 2000, staff filed a recommendation to order USLD to show cause why it should not be fined \$10,000 or have its certificate canceled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. Once the recommendation was filed, USLD responded to staff's inquiry. On January 21, 2000, staff received a fax of a letter dated September 22, 1999 that addressed the questions that were asked in the initial inquiry on May 25, 1999.

Prior to the February 1, 2000, Agenda Conference, USLD requested and received a deferral of this item in order to investigate why a response was not provided and to gather the information necessary to comply with staff's request. On March 17,

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2000, and April 3, 2000, USLD provided the appropriate information to staff. USLD explained that the unavailability of certain records and the departure of the employee assigned to preparing the report complicated USLD's ability to provide complete answers to staff's questions. Subsequently, on September 12, 2000, USLD proposed a settlement for the apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries. In its settlement offer, USLD agreed to make a contribution of \$5,000 to the General Revenue Fund of the State of Florida, ". . . without conceding that any grounds exist that would justify the imposition of a penalty. . . ." (Attachment A, Pages 9, 10) The settlement proposal is contingent upon the Commission's approval of staff's recommendation in Issue 1; therefore, if the Commission rejects Issue 1, Issue 2 is rendered moot.

Based on the foregoing, staff believes the settlement agreement as summarized in this recommendation is fair and reasonable. Any contribution should be received by the Commission within ten business days from the issuance date of the Commission Order and should identify the docket number and company name. The Commission should forward the contribution to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If USLD fails to pay in accordance with the terms of its settlement offer, the company's certificate should be canceled, and this docket should be closed.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: No. If no person, whose interests are substantially affected by the proposed agency action files a protest of the Commission's decision on Issue 1 within the 21-day protest period, the Commission's Order will become final upon issuance of a consummating order. This docket should, however, remain open pending the completion of the refund, receipt of the final report on the refund, and remittance of the \$5,000 voluntary contribution. After completion of the refund, receipt of the final refund report, and remittance of the \$5,000 voluntary contribution, this docket may be closed administratively. If the company fails to complete the refund or to pay the settlement contribution, this docket may be closed upon cancellation of USLD Communications, Inc.'s certificate. **(B. Keating/Vaccaro)**

STAFF ANALYSIS: If no person, whose interests are substantially affected by the proposed action files a protest of the Commission's decision on Issue 1 within the 21-day protest period, the Commission's Order will become final upon issuance of a consummating order. This docket should, however, remain open pending the completion of the refund, receipt of the final report on the refund, and remittance of the \$5,000 voluntary contribution. After completion of the refund, receipt of the final refund report, and remittance of the \$5,000 voluntary contribution, this docket may be closed administratively. If the company fails to complete the refund or to pay the settlement contribution, this docket may be closed upon cancellation of USLD Communications, Inc.'s certificate.

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Attachment A

MCWHIRTER REEVES
ATTORNEYS AT LAW

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TALLAHASSEE OFFICE:
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September 12, 2000

Mr. Ray Kennedy
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Pay telephone evaluation-USLD
Docket Number: 000036-TI

2000 SEP 12 PM 4:17
DIVISION OF
COMPETITIVE SERVICES

Dear Ray:

In my letter of July 6, 2000, which summarized earlier correspondence, I described USLD's efforts to ascertain the amount of overcharges associated with the application of a \$0.25 set fee that caused certain USLD payphones to exceed, during the period February 1999-March 2000, a rate cap imposed by the Commission. In that letter I indicated that it had been necessary for USLD to estimate the number of calls for the period February-April 1999 because actual data for the period had been rendered unavailable by a change in accounting systems.

Subsequently, I informed you that, as a result of continuing efforts, USLD had succeeded in gaining the ability to retrieve actual data for the February-April 1999 period. At USLD's request, the Commission deferred its consideration of Staff's recommendation in the above docket to allow USLD an opportunity to revise calculations of overcharges based on actual, rather than estimated, data for the period.

That process has now been completed. The data shows that during the period February 1999-March 2000 a total of 134,874 calls were subject to the application of a \$0.25 set fee that caused total charges to exceed the cap imposed by the Commission. Accordingly, the total overcharges amounted to \$33,718.50. This represents an increase over the \$28,939.59 figure in my letter of July 6, 2000, which was based on a mixture of actual and estimated data.

In earlier correspondence USLD requested authority to contribute this amount, with interest, to the General Revenue Fund in lieu of refunds to individual customers. USLD now agrees to refund the overcharges to individual customers to the extent possible, and to remit to the General Revenue Fund only the amount that cannot be delivered to customers. USLD suggests the following time frame: refunds by the end of January, 2001; an initial report on the status of the refund effort by the end of April, 2001; and a final report by the end of July, 2001.

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Ray Kennedy
September 12, 2000
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Attachment A

I will reiterate USLD's position relative to Staff's view that USLD did not respond adequately or timely to Staff's initial inquiries. To be clear, USLD does not concede that USLD's actions in responding to Staff constitute a violation of rules or regulations for which a penalty could be assessed. The unavailability of certain records and the departure from the Company--well into the internal investigation--of the employee to whom the task of preparing the report had first been assigned complicated USLD's ability to provide complete answers to Staff's questions. Based on correspondence, it appears to USLD that at one point there may have been miscommunication between Staff and the individual with whom Staff was in contact regarding USLD's need for more time within which to respond. However, while USLD attempted in good faith to be responsive to your request, USLD acknowledges that delays occurred, and more time was required to provide Staff with all of the information it requested than Staff expected--and more than USLD intended. In the spirit of settlement, and without conceding that any grounds exist that would justify the imposition of a penalty, USLD offers to contribute \$5,000 to the General Fund. This offer is contingent on acceptance of this amount (and the refund of inadvertent overcharges described herein) in full settlement of any issues associated with Staff's evaluation of USLD's pay telephone charges during the period February, 1999 - March 2000 and USLD's responses thereto.

Yours truly,



Joseph A. McGlothlin

JAM/kmr
cc: Carol Kuhnnow
Cindy Trevino