

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against Preferred Carrier Services, Inc. d/b/a Telefonos Para Todos and d/b/a Phones For ALL for violation of Rule 25-4.118, F.A.C., Interexchange Carrier Selection.

DOCKET NO. 971485-TI
ORDER NO. PSC-98-1627-AS-TI
ISSUED: December 7, 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 APPROVING OFFER OF SETTLEMENT

Preferred Carrier Services, Inc. d/b/a Telefonos Para Todos and d/b/a Phones For ALL (PCS), holder of Certificate No. 4407, is a provider of interexchange telecommunications service. PCS was certificated on March 22, 1996. PCS reported gross operating revenue of \$2,077,268 and intrastate revenues of \$245,793.19 on its Regulatory Assessment Fee Return for the period of January 1, 1997, through December 31, 1997. As a provider of interexchange telecommunications service in Florida, PCS is subject to the rules and regulations of this Commission.

From March 22, 1996, until August 31, 1998, the Division of Consumer Affairs closed a total of 53 complaints against PCS as unauthorized carrier change (slamming) infractions in apparent violation of Rule 25-4.118, Florida Administrative Code. Based on the number of complaints received by the Division of Consumer Affairs as apparent slamming violations, our staff opened this docket to investigate whether PCS should be required to show cause why it should not be fined or have its certificate canceled, pursuant to Section 364.285, Florida Statutes. However, prior to show cause proceedings, PCS submitted an offer to settle the case.

DOCUMENT NUMBER-DATE

13725 DEC-7 98

FPSC-RECORDS/REPORTING

On February 18, 1998, and again on August 10, 1998, PCS met with our staff to discuss the pending show cause case. On October 29, 1998, PCS submitted its offer to settle. (Attached hereto and incorporated herein as Attachment A.) In its settlement offer PCS agreed to do the following:

1. PCS will not market long distance in Florida by written letters of agency for a total of two years. This time period would begin on March 1, 1997 (when PCS voluntarily ceased marketing) and continue through March 1, 1999.
2. PCS will make a voluntary contribution of \$50,000 to the General Revenue Fund in five installments of \$10,000. The payments will be due on December 1, 1998, March 1, 1999, June 1, 1999, September 1, 1999, and December 1, 1999.

We find that PCS's settlement offer satisfactorily addresses each of our concerns. Preferred Carrier Services voluntarily ceased its sweepstakes marketing activity in March of 1997. In addition, PCS has resolved all outstanding complaints. We do find it appropriate to approve PCS's request for the marketing restrictions to be effective from March 1, 1997, to March 1, 1999, since PCS voluntarily ceased the sweepstakes marketing that caused the customers' complaints.

Therefore, we find the terms of the settlement agreement to be fair and reasonable. Accordingly, the offer of settlement submitted by Preferred Carrier Services on October 29, 1998, is approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Offer of Settlement dated October 29, 1998, by Preferred Carrier Services, Inc. d/b/a Telefonos Para Todos d/b/a Phones For ALL is hereby approved. It is further

ORDERED that this docket shall remain open pending the remittance of the \$50,000 voluntary contribution. The voluntary contribution will be remitted in installments of \$10,000 due on December 1, 1998, March 1, 1999, June 1, 1999, September 1, 1999, and December 1, 1999. Upon remittance the \$50,000 settlement shall 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, and this docket will be closed administratively.

By ORDER of the Florida Public Service Commission this 7th day of December, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

CBW

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/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 after the issuance

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of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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ATTACHMENT A

RUTLEDGE, ECENIA, UNDERWOOD, PURNELL & HOFFMAN

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October 29, 1998

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Re: Preferred Carrier Services, Inc.
Docket No. 971485-TI

OCT 29 1998
LEGAL DIVISION

Dear Ms. Brown:

This letter presents the third proposal by Preferred Carrier Services, Inc. ("PCS") for settlement of the above-referenced proceeding. PCS' previous settlement proposals dated March 16, 1998 and August 27, 1998 (copies attached), and the facts and justifications stated in support of those earlier proposals, are adopted and incorporated herein in support of this final settlement offer.

INTRODUCTION

On October 14, 1998, staff presented alternatives for settlement including a proposal under which PCS would agree to a payment of \$50,000 over a period of up to eighteen months with PCS' agreement to cease marketing of interexchange services for three years. In responding to staff's proposal and counteroffer for settlement, PCS wishes to clearly distinguish between its current marketing of competing local exchange services and its prior, brief involvement in sweepstakes marketing of interexchange services. PCS currently markets its competing local exchange services under PCS' approved trade names, "Phones For All" and "Telefonos Para Todos."¹ Such marketing

¹Order No. PSC-97-1117-FOF-TP, issued on September 24, 1997, approved the amendment of PCS' IXC certificate No. 4407 to reflect that it was doing business as Phones For

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of local services may also include the provision of interexchange services to local exchange customers. To PCS' knowledge, such marketing of competing local exchange services (at times, packaged with interexchange services) has never been the basis of a complaint to the Commission. In contrast, this docket was opened in response to PCS' brief involvement two years ago in the sweepstakes marketing of interexchange services only, the circumstances of which are detailed in our prior letter dated March 16, 1998 and elaborated on herein. PCS voluntarily ceased marketing of interexchange services in Florida as of March 1, 1997.

As staff is aware, Phones For All, Inc. ("PFA"), as the new owners of PCS' IXC Certificate No. 4407 and ALEC Certificate No. 4682, remains committed to resolving the potential liability of PCS in this proceeding before filing an application for approval of transfer of majority organizational control. As stated in our letter of August 27, 1998, we will continue to work with staff to resolve all outstanding regulatory issues and hope to achieve a resolution of this proceeding prior to filing the application for approval of transfer of majority organizational control.

SETTLEMENT PROPOSAL

In response to staff's proposed settlement alternatives, PCS believes that a fair and equitable settlement of this proceeding would be accomplished by the following:

1. The payment of a voluntary contribution of \$50,000 to the general revenue fund of the State of Florida, with no admission that PCS violated any statute, rule or order of the Commission; and

2. The agreement of PFA, for itself and on behalf of PCS, to continue to not market interexchange services in Florida by written letters of agency for a total of two years, beginning with the date on which PCS voluntarily ceased marketing of interexchange services in Florida, March 1, 1997, and ending on March 1, 1999.

3. The payment of the \$50,000 may be in five monthly installments of \$10,000 each, and with the first payment due on December 1, 1998 and the remaining payments due on March 1, 1999, June 1, 1999, September 1, 1999 and December 1, 1999, and may be prepaid at any time.

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JUSTIFICATION FOR PROPOSAL

The reasons and facts stated in support of our August 27, 1998 settlement proposal are restated herein as follows:

1. When the Commission opened this docket and eleven others in November of 1997 to investigate charges of slamming, it had received and forwarded to PCS complaints from 121 customers. All of the 121 complaints were responded to and resolved by PCS prior to the opening of this docket. To PCS' knowledge, none of the eleven other companies had completed their responses to their complainants before their respective dockets were opened.

2. In over 50% of the cases, PCS responded to complaints received from the Commission within four days. PCS' response to each customer included confirmation of a refund or credit reflecting the difference in PCS' rates and the rates of the prior carrier, and for many of the complaints PCS simply wrote a check for the entire amount of the customer's long distance bill for their pertinent period of time.

3. PCS has provided staff with copies of all correspondence concerning the complaints in question and with summaries of all complaints received by month, by date received, and by date responded to, listing each customer by name, by ANI, and by LOA. PCS has provided staff with a set of all refund letters, reflecting credits and payments totaling approximately \$10,000. PCS has provided these materials since October of 1997 promptly, voluntarily and without objection. PCS has expeditiously resolved customer complaints and has fully cooperated with the Commission staff in the investigation of these complaints.

4. The language in PCS' letter of agency in fact complied with former Rule 25-4.118(3), Florida Administrative Code, and thus did not constitute a violation of that rule, much less a "willful" violation as that term is defined in Florida law: "...that the actor has intentionally done an act of unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow...."²

5. The facts of this case are unlike those of any of the other eleven slamming dockets opened in November, 1997. Each case should be considered on its own facts and its own merit. Since PCS' first settlement offer was made seven months ago, it has become increasingly clear that the primary goal of these proceedings is deterrence.

²Metropolitan Dade County v. State of Florida, Department of Environmental Protection,
714 So.2d 512 (Fla. 3d DCA 1998).

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6. There is simply no deterrence to be accomplished in PCS' case. None of the slamming complaints against PCS involve LOAs signed after the sweepstakes marketing program was voluntarily terminated in February, 1997, with the two exceptions (involving two LOAs signed in March and April of 1997 respectively) discussed in PCS' first settlement proposal. For the past twenty months, and for nine months before this docket was opened, there has been no need or reason for the Commission to act to deter PCS from engaging in the marketing which generated the slamming complaints.

7. To the extent that the payment of a voluntary contribution to the state general revenue fund or a fine is intended to deter future willful violations of Commission rules or orders, such a goal has no application to the facts of this case. Not only would a fine not serve to deter the prospect of future willful violations of Commission rules, but any fine or settlement - - moreover, any fees and expenses incurred to defend a show cause proceeding - - serve only to impose costs on the new owners of a company which is marketing local exchange service, not long distance service.

8. Moreover, the imposition of a fine on PCS serves as a precedent to deter the very type of conduct that the Commission surely wishes to encourage. In this case, PCS voluntarily and proactively, quickly and decisively, policed itself by permanently terminating the sweepstakes marketing activities and resolving the customer complaints prior to the opening of this docket and the threat of Commission action.

9. Additionally, as staff and the Commission have recognized, it is appropriate to consider whether a company has a prior history of slamming complaints. At various times, a respondent has been characterized as a "first time offender" in comments by Commissioners considering a settlement proposal. Conversely, proposed fine amounts have been doubled and tripled for companies which have been the subject of prior show cause proceedings involving slamming complaints.

10. PCS is a first-time and a last-time offender. The sweepstakes marketing program was voluntarily and permanently terminated in February of 1997, has not been used since, and could not be repeated under the Commission's new Rule 25-4.118. All complaints against PCS have long since been resolved.

ADDITIONAL JUSTIFICATION FOR PROPOSAL

11. PCS' August 27, 1998 settlement offer called for the payment of a voluntary contribution of \$25,000 to the general revenue fund of the State of Florida. Staff has confirmed that it will recommend settlement and closure of this docket if PCS is willing to make a contribution of \$50,000 to the general revenue fund and institute the remedial measure of ceasing the marketing of PCS' interexchange services for a period of three years. **PCS voluntarily ceased marketing of its**

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interexchange services in Florida as of March 1, 1997. Thus, PCS already has, without any form of prompting from the Commission, stopped marketing its interexchange services in Florida. PCS maintains that such self-instituted remedial measures should be recognized in a positive fashion by the Commission and provide a sound basis for a compromise and resolution of this proceeding. Accordingly, PCS submits that its final offer of \$50,000 and voluntary termination of marketing of interexchange services in Florida for a period of two years, serves the public interest and should be approved by the Commission.

For these reasons, PCS believes that the proposal made in this letter is reasonable and justified. We are hopeful that staff and the Commission will recognize that this proposal has been made in good faith and will find it acceptable and in the public interest.

Please let me know if any additional information is required to allow staff and the Commission to give full and fair consideration to our proposal.

Sincerely,


Kenneth A. Hoffman

KAH/rl

cc: Jeffrey J. Walker, Esq.
Ms. Kelly Biegalski, by hand delivery
Mr. Richard Moses, by hand delivery