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JULY 24, 1997

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

FROM: DIVISION OF COMMUNICATIONS (ISLER)
DIVISION OF LEGAL SERVICES (CULPEPPER)
DIVISION OF CONSUMER AFFAIRS (DURBIN)

RE: DOCKET NO. 961479-TI - PHONE CALLS, INC. - INITIATION OF SHOW CAUSE PROCEEDINGS FOR VIOLATIONS OF RULES 25-4.043, FLORIDA ADMINISTRATIVE CODE, RESPONSE TO COMMISSION STAFF INQUIRIES, 25-4.118, FLORIDA ADMINISTRATIVE CODE, INTEREXCHANGE CARRIER SELECTION, AND 25-24.472, FLORIDA ADMINISTRATIVE CODE, IMPROPER USE OF A CERTIFICATE

AGENDA: AUGUST 5, 1997 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\961479TI.RCM

CASE BACKGROUND

By Order No. PSC-96-0637-FOF-TI (Docket No. 960273-TI) issued May 10, 1996, the Commission approved the assignment of Certificate No. 3543 from Long Distance Services, Inc., to Phone Calls, Inc., (Phone Calls or PCI) a switchless reseller, effective June 1, 1996. Long Distance Services originally obtained its certificate on April 19, 1994.

By Order No. PSC-97-0124-FOF-TI issued February 4, 1997, the Commission ordered Phone Calls, Inc. to show cause why it should not be fined up to $25,000 per day or have its certificate canceled for not responding to staff inquiries, switching consumers' long distance carrier without authorization, and misusing its certificate.

In a separate docket (No. 970151-TI), the Commission issued Order No. PSC-97-0287-FOF-TI on March 14, 1997. In that docket,

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the Commission canceled Phone Calls, Inc.'s certificate for not providing the Commission with an address change within 10 days of the change if it did not pay a $250 fine. The company did not pay the fine.

Staff spoke with Mr. John Fudesco, President of Atlas Communications, Ltd. Mr. Fudesco advised staff that it is Phone Calls, Inc.'s underlying carrier and stated that Atlas continues to serve approximately 3,000 Florida consumers under Phone Calls, Inc.'s name.

Staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should Phone Calls, Inc., be fined $860,000 for violations of Rules 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, 25-4.118, Florida Administrative Code, Interexchange Carrier Selection, and 25-24.472, Florida Administrative Code, Improper Use of a Certificate?

PRIMARY RECOMMENDATION: No, Phone Calls, Inc., should not be fined for violations of rules. (Isler)

ALTERNATIVE RECOMMENDATION: Yes, Phone Calls, Inc., should be fined $860,000 for violations of rules. (Isler)

PRIMARY STAFF ANALYSIS:

The Division of Consumer Affairs staff received 430 slamming complaints between November 3, 1994 and November 30, 1996. Of the total number of complaints, 407 were logged against Phone Calls, Inc. in 1996 alone. That is the record for the highest number of complaints in an 11-month period since Consumer Affairs began tracking slamming complaints.

In addition to the slamming complaints, Phone Calls, Inc. ceased responding to staff and apparently allowed an uncertificated carrier (Charity Long Distance) the use of its certificate.

On February 4, 1997, the Commission issued Order No. PSC-97-0124-FOF-TI, requiring the company to show cause why it should not be fined or have its certificate canceled for the above mentioned violations. Phone Calls, Inc. did not respond to the Show Cause Order.

In a separate docket, No. 970151-TI, the Commission issued Order No. PSC-97-0287-FOF-TI on March 14, 1997, canceling Phone Calls, Inc.'s certificate for not providing the Commission with an address change within 10 days of the change if it did not pay a $250 fine. The company did not pay the fine or provide staff with its proper address.

The Commission has already canceled Phone Calls, Inc.'s certificate, which is the final and most severe penalty against a certificated company. Therefore, to fine Phone Calls, Inc., would serve no purpose.

ALTERNATIVE STAFF ANALYSIS

Although the Commission previously canceled the company's certificate, staff believes that a fine is appropriate. In the unlikely event that Phone Calls, Inc., applies for another certificate of public convenience in the future, Phone Calls would have to pay the fine before its application would be considered. In previous show cause cases for slamming violations, the Commission fined interexchange carriers or accepted settlement offers ranging between $2,000 and $100,000. Section 364.285, Florida Statutes, provides that the Commission may fine a regulated company up to $25,000 per day per violation, which means that the fine could be in the millions of dollars. Therefore, staff believes a fine of $2,000 per complaint, or $860,000, is reasonable. Staff is aware that this is the highest amount a carrier has been fined for slamming complaints. However, since Phone Calls, Inc., has the dubious honor of having the highest number of complaints logged against it in an 11-month period, staff believes a fine of $860,000 is appropriate. In addition, a check of Consumer Affairs records show that as of March 31, 1997, staff continued to receive slamming complaints against the company. While it appears that Phone Calls, Inc., is currently no longer in business, staff believes a fine of $860,000 is appropriate.

ISSUE 2: Should the Commission order all certificated interexchange telecommunications companies to discontinue providing interexchange telecommunications service to Phone Calls, Inc.?

RECOMMENDATION: **Yes. The Commission should order all certificated interexchange telecommunications companies to discontinue providing interexchange service to Phone Calls, Inc., within 30 days from the date the Commission's Proposed Agency Action Order becomes final.** In addition, staff suggests that the Commission encourage the LECs and USBI to work with Atlas to come to some arrangement whereby Phone Calls, Inc.'s customers are informed that Phone Calls, Inc., is no longer providing service and that the customer should contact their LEC to select another interexchange carrier. **(Isler)**

STAFF ANALYSIS: On May 30, 1997, Mr. John Fudesco, of Atlas Communications, Ltd., (Atlas) contacted staff regarding Phone Calls, Inc. Mr. Fudesco stated that Atlas was Phone Calls, Inc.'s, underlying carrier, but that Atlas had been providing service in Phone Calls' name to Phone Calls customers since Phone Calls ceased operations. Mr. Fudesco indicated that Atlas has been involved in numerous proceedings against Phone Calls, Inc., in other states, as well as in proceedings before the Federal Communications Commission. In further conversations with Mr. Fudesco and other Atlas representatives, Atlas expressed its concerns that if the Commission orders all interexchange carriers to cease providing service to Phone Calls, Inc., Florida customers being served under Phone Calls, Inc.'s, name will suddenly be without long distance service. Atlas asserts that there are approximately 3,000 customers currently being served by Atlas under Phone Calls' name. Atlas also expressed some concern that any complaints logged at the Commission by Phone Calls customers will, ultimately, reflect badly upon Atlas as Phone Calls' underlying carrier.

Atlas indicated that it would like to send the affected customers a notice explaining what had happened and that the customers now need to contact their local exchange company (LEC) to select another primary interexchange carrier. Atlas believes that such notice would allow Phone Calls customers to select a carrier before their long distance service is blocked. Atlas indicated, however, that it bills through a billing agent, USBI, and does not have access to address information for the Phone Calls customers. Thus, Atlas would be unable to get notice to the Phone Calls customers without agreement from USBI and the LECs.

Staff understands Atlas's concerns that customers may be confused as to why their long distance service has been blocked.

Staff believes, however, that it is more important that the Commission rectify the current situation in which Phone Calls customers still believe they are being served by an active, operating company. Staff notes that the affected customers will still be able to use access codes to obtain long distance service until they select a new carrier.

Staff further believes that it is Atlas's responsibility, if it wants to send notice to Phone Calls customers, to work out an agreement with USBI and the LECs so that the notice is delivered and any costs that may be incurred are paid. Nevertheless, staff suggests that the LECs and USBI should be encouraged to work with Atlas to come to some arrangement whereby Phone Calls, Inc.'s customers are informed that Phone Calls, Inc., is no longer providing service and that the customer should contact their LEC to select another interexchange carrier. Staff emphasizes that any notice issued to Phone Calls customers should be competitively neutral. Atlas has indicated to staff that staff will be given an opportunity to review the notice prior to issuance.

As such, because PCI's certificate has already been canceled and because of the severity of the numerous violations by PCI, staff recommends that the Commission order all certificated IXCs to discontinue providing long distance service to this company. In light of Atlas's desire to notify customers of this matter and the need for Atlas to negotiate with other entities in order to accomplish such notice, staff further recommends that this portion of the Commission's order be effective 30 days from the date the proposed agency action becomes final. Staff believes that 51 days is sufficient time to arrange for notification of Phone Calls customers. Whether or not Atlas is able to arrange for such notification of Phone Calls customers, all IXCs should be ordered to cease providing service to Phone Calls, Inc., 30 days from the date an Order issued from this recommendation becomes final.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected files a timely protest of the Commission's proposed agency action, this docket should be closed. If the alternative recommendation in Issue 1 is approved, the fine should be paid to the Commission for remittance to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the fine is not paid, the fine should be referred to the Comptroller's Office for further collection efforts. (Culpepper)

STAFF ANALYSIS: If no person whose substantial interests are affected files a timely protest of the Commission's proposed agency action, this docket should be closed. If the alternative recommendation in Issue 1 is approved, the fine should be paid to the Commission for remittance to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the fine is not paid, the fine should be referred to the Comptroller's Office for further collection efforts. (Culpepper)