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ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
practices, and conduct of L.D. Services,)
Inc., doing business as Long Distance)
Services, to determine whether it)
has violated the laws, rules, and)
regulations governing the manner)
in which California consumers are)
switched from one long distance carrier)
to another.)
_____)

FILED
PUBLIC UTILITIES COMMISSION
APRIL 23, 1997
SAN FRANCISCO OFFICE
197-04-044

**ORDER INSTITUTING INVESTIGATION INTO THE
OPERATIONS OF L.D. SERVICES, INC.**

L.D. Services, Inc. (LDS) is a California corporation with its principal place of business in Santa Fe Springs, California. In some California markets it does business as "Long Distance Services." On July 17, 1992, LDS filed Application (A.) 92-07-028 seeking authority to operate as a reseller of interLATA telecommunications services within California.

On December 3, 1992, the Commission issued Decision (D.) 92-12-003 granting LDS a certificate of public convenience and necessity (CPCN) to resell interLATA telecommunications services within California and assigning LDS corporate identification number U-5297-C. According to LDS, it is a

switchless reseller of the services of various facilities-based long-distance companies in California.

The Consumer Services Division's Enforcement Branch (Staff) has investigated consumer complaints and other information, and concludes that LDS has violated the law governing how telephone subscribers are switched from one interexchange carrier to another. Staff alleges that LDS has switched and is continuing to switch at an alarming rate telephone subscribers' long distance service provider using methods which do not comply with Public Utilities Code (P.U. Code). If these allegations are true, LDS's fitness to operate in California is in question.

Staff has prepared declarations that support our order today freezing LDS's ability to submit to local exchange carriers primary interexchange carrier (PIC) changes for subscribers. A copy of this OII and the declarations will be served on either the designated agent for service of process for LDS or the company president in charge of operations. Both are located at: 13230 E. Firestone Blvd., Suite D-2, Santa Fe Springs, California 90670.

I. STAFF ALLEGATIONS

The Staff's declarations document the following facts and allegations:

Staff began a full-scale preliminary investigation of LDS in November of 1996. CSD staff learned that, according to Pacific Bell, Pacific Bell customers have said their telephone lines were switched to LDS without their authorization (slammed) more than 27,000 times since January 1995. Based on a ratio provided by LDS, 27,000 lines is roughly equivalent to 20,000 customers or victims. Any switch of a customer's long distance service to LDS without the subscriber's permission would violate Public Utilities (P.U.) Code § 2889.5.

Staff found that virtually all of LDS's customers are switched to LDS at the request of LDS. The customers do not switch themselves to LDS (as in response to advertising or word of mouth). Staff found that over time about 10% of all customers LDS switched later complained to a LEC that they were slammed by LDS. This percentage is about three times the average for the long-distance industry as a whole. Finally, Pacific Bell told staff that the majority of customers switched to LDS had previously elected to receive service information from Pacific Bell in Spanish.

Staff states that it independently verified the above parameters of LDS' apparent slamming in a variety of ways. First, staff interviewed 74 randomly selected persons who told Pacific Bell that they were slammed by LDS. During these interviews, two-thirds stated again that they had been slammed by LDS, with most of the remaining persons stating they could no longer remember the name of the company which had slammed them. Many customers also complained of higher rates with L.D. Services, said there was no contact with L.D. Services before they were switched, or said there was no attempt to verify that the subscriber intended to switch to L.D. Services. Some said they were billed for calls they did not make or said that an L.D. Services representative masqueraded as an employee of a different telephone company.

Second, staff examined records kept by GTE California (GTE) which indicated that an additional 2366 lines were allegedly slammed by LDS since January 1995. Staff interviewed 49 of these complainants and 18 clearly recalled events and said that LDS slammed them. GTE customers receive bills from L.D. Services which state "Long Distance Services" instead of "L.D. Services." Many customers told staff they were confused by this name, or by "L.D. Services" appearing on their bills.

Third, staff was able to interview 41 of the 51 customers who wrote to this Commission complaining about LDS and virtually all confirmed that they were slammed by LDS.

Fourth, staff reviewed the complaints of the 1,266 Pacific Bell customers who called Pacific Bell and asked that their complaints about L.D. Services be referred by Pacific Bell to the appropriate regulatory agency. Of these, 1263 said they were slammed by LDS, 204 said they were slammed by LDS more than once, and 32 said that an LDS representative had masqueraded as an employee of another long distance carrier or Pacific Bell. In numbers of referred complaints, LDS's record was the sixth-worst of all long-distance companies in California in 1996 and the third-worst in 1997 (January and February), according to Pacific Bell. Staff interviewed nine of these complainants randomly selected and seven confirmed that they were slammed by LDS.

Staff notes that in 1995, L.D. Services settled a formal complaint at this Commission resulting in a payment of more than \$2000 on the customer's behalf, settled a California class action civil suit alleging slamming for \$12,500, and was served by the Illinois Attorney General with a "Complaint for Injunctive and Other Relief" alleging slamming. Staff further notes that in 1996, L.D. Services paid \$5000 to Oregon Attorney General for telemarketing law violations, and received "Investigative Demands" from the Attorneys General of Missouri and Idaho.

Staff also found evidence indicating that LDS may have operated as a telephone corporation before receiving authority from this Commission.

LDS, in Advice Letter No. 14, filed March 25, 1997 is seeking Commission approval for IXC Long Distance, Inc. (IXC) to acquire ownership and control of LDS. The Consumer Services Division made a timely protest to this

Advice Letter on the grounds that the carrier's compliance issues should be fully aired before it is allowed to sell, presumably at a profit, to another entity.

II. DISCUSSION

If the serious allegations set forth in the Staff's declaration are true, LDS does not meet the public convenience and necessity requirements we expect of telecommunications providers and there are ample grounds to revoke LDS's authority to operate within California. Staff has demonstrated that there is probable cause to believe that LDS has been slamming at an alarming rate, preying particularly on Spanish speaking consumers, and that as recently as February the rate of switched customers complaining to Pacific Bell climbed to 25%.

P.U. Code § 2889.5 requires telephone corporations to thoroughly inform the subscriber of the nature and extent of the service offered and specifically requires the telephone corporation to establish whether the subscriber intends to make any change to the subscriber's telephone service. Despite this requirement, the Commission is receiving numerous consumer complaints (both directly and through Local Exchange Carrier's regulatory referrals) alleging that subscribers did not authorize the change of their telephone service to LDS. Many subscribers said they had no knowledge, let alone intent, to change their telephone service provider and had no contact with LDS before they were switched.

In the long distance industry as a whole, the number of slamming complaints made to the LECs and to the Commission is high and we are intent on taking all measures which we can to keep bringing it down

The Commission has an important interest in protecting the public from unauthorized long distance service switches as well as protecting the long distance marketplace competitors and participants from unfair competition. Given the nature and level of violations alleged and documented in the Staff's declaration, we believe there is a substantial likelihood that harm to the public in

large numbers will continue and that there is demonstrated good cause to act today to extend some basic protection to California consumers. We find that the protection of the public requires the following steps pending a further order in this matter. First, LDS will submit no additional PIC changes to Inter-Exchange Carriers (IECs) or local exchange carriers (LECs) in California. By this order we prohibit LDS or any of its agents from transmitting, in writing or electronically, to another telephone corporation, directly or through other telephone corporations, a request to change a subscriber's presubscribed or primary interexchange carrier. LDS may still market to subscribers. Subscribers who want to switch their PIC to Respondent's service can still, on their own volition and by their individual affirmative action, submit such change requests directly to their local exchange carrier. Second, LDS cannot sell or transfer any of its consumers. Third, LDS may not change ownership, whether through merger or acquisition, pending further decision by this Commission in this matter.

A hearing is set for May 7, 1997 at 10:00 a.m. at Commission Courtroom, Stated Office Building, 505 Van Ness Avenue, in San Francisco, to allow LDS to adduce evidence or otherwise make a showing that today's orders should be vacated or modified pending completion of this investigatory proceeding and while Staff completes its investigation.

We, therefore, issue this OII and find that because of the apparent extremely high level of slamming and the resulting harm to thousands of California consumers, it is necessary to order an immediate freeze of respondent-initiated primary interexchange carrier changes. The respondent will have the opportunity at the scheduled hearing to demonstrate whether there is cause to modify today's order.

Good cause appearing, therefore,

IT IS ORDERED that:

1. An investigation on the Commission's own motion is hereby instituted into the operations of respondent, L.D. Services, Inc., to determine whether:

- a) Respondent violated P.U. Code § 2889.5 by switching subscribers' long distance service provider without the subscribers' authorization;
- b) Respondent should be ordered to cease and desist from any unlawful operations and practices;
- c) Respondent should be ordered to pay restitution to consumers;
- d) In addition to fines for any violations of P.U. Code § 2889.5 or other order, decision, rule, direction, or requirement of the Commission which may be levied under Public Utilities Code § 2107 or any other provision of law, whether the respondent is unfit to conduct utility service and should have its certificate suspended or revoked and its Carrier Identification Code deactivated.

2. As a condition of respondent's continuing authority to operate in California pending a final decision in this matter, starting on the fourth day after personal service of this order on either the respondent's president and presumed manager in charge of daily operations, Richard Bishop, or the registered agent for process (located at the same address), Donna Robinson, respondent is prohibited from:

- a) submitting PIC changes directly or indirectly, through other telecommunication companies, to the local exchange carriers within California; and

b) transferring or selling its customers.

3. A hearing is set for May 7, 1997 at 10:00 A.M. Commission Courtroom, State Office Building, at 505 Van Ness Avenue, San Francisco, solely to allow the Respondent an opportunity to cross-examine staff's witnesses and present evidence that the PIC freeze and other requirements ordered in paragraph 2 are not warranted, and to show cause, if any, to modify or vacate ordering paragraph 2.

4. Respondent's Advice Letter No.14 is hereby held in abeyance and will not become effective 40 days after filing, and is consolidated with this investigatory proceeding for adjudication. Respondent will not change ownership by merger, acquisition, or any other means without further action by this Commission. Advice Letter No. 14 and all advice letters submitted by Respondent after today will be consolidated with this OII for consideration. Respondent is directed to disclose to Staff any future plans or actions to transfer the operating authority which is the subject of this proceeding, and/or any part of the control of the business in which Respondent is entitled to use that authority, until such time as there is a final Commission decision disposing of this matter.

5. Staff shall inform Pacific Bell and GTE when the four days following personal service of this order on LDS will occur, and these local exchange utilities shall process no additional carrier-indicated PIC charges for LDS or its CIC after that date until further order of the Commission.

6. The information contained in Staff's declarations that has been previously been identified by Pacific Bell, GTE, or LDS as proprietary shall, in the interest of an open and expeditious hearing, be made public.

A separate prehearing conference shall be scheduled and held for the purpose of setting a schedule for the exchange of written testimony, determining which of the Staff's percipient and collaborative witnesses will need to testify, and addressing any discovery matters relating to the hearing on the ultimate issues in this OII.

The Staff may continue discovery and will continue to investigate the operations of the respondent if there are important issues which it needs to finishing investigating. Any additional information which Staff wishes to advance as direct showing evidence in this proceeding shall be provided to the Respondent in advance of any hearings in accordance with the schedule directed by the Administrative Law Judge. Staff will respond to discovery requests directed at Staff's prepared testimony offered in this proceeding.

At the first evidentiary hearing held in this investigatory proceeding, the Respondent shall submit testimony on why a bond or some other collateral should not be required to assure funding to guarantee compliance with any orders which may ultimately be issued in connection with this proceeding.

The Executive Director shall cause this order, complete with the declarations submitted by Staff to support the carrier-initiated PIC freeze ordered in ordering paragraph 4, to be personally served on the respondent's president and/or registered agent for process at: L.D. Services, Inc., 13230 E. Firestone, Suite D-2, Santa Fe Springs, California 90670.

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This Order was listed on the Commission's internal agenda because it contains orders which become effective upon personal service and public disclosure of the identity of the Respondent and the contents of the order could provide an incentive to evade personal service of this Order.

This order is effective today.

Dated April 23, 1997, in San Francisco, California

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.


HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

Certified as a True Copy
of the Original


ASST. EXECUTIVE DIRECTOR, PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA