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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Staff of the Missouri Public  
Service Commission,  
  
Complainant,  
  
vs.  
  
Long Distance Services, Inc.  
  
Respondent.

CASE NO. TC-98-337

**AMENDED NOTICE OF COMPLAINT**

Long Distance Services, Inc.  
50 W. Big Beaver Road  
Suite 136  
Troy, Michigan 48084  
CERTIFIED MAIL

The Staff of the Missouri Public Service Commission filed a complaint with the Missouri Public Service Commission against Long Distance Services, Inc. on February 9, 1998, a copy of which is enclosed. Commission rule 4 CSR 240-2.070 allows the Respondent 30 days after notice to file an answer stating legal and factual defenses, and/or describing the measures taken to satisfy the complaint. The Respondent shall file an answer on or before April 6, 1998, with the Secretary of the Missouri Public Service Commission, P. O. Box 360, Jefferson City, MO 65102, and send a copy to the Complainant. A copy of this Notice was sent to the Complainant by First Class mail.

BY THE COMMISSION

*Dale Hardy Roberts*

(SEAL)

**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

Dated at Jefferson City, Missouri,  
on this 6th day of March, 1998.

Copy to:           Staff of the Missouri Public Service Commission  
                    P.O. Box 360  
                    Jefferson City, MO 65102-0360

Bensavage, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED  
FEB 09 1998  
MISSOURI  
PUBLIC SERVICE COMMISSION

Staff of the Missouri Public Service  
Commission,

Complainant,

vs.

Long Distance Services, Inc.,

Respondent.

Case No. TC-98-337

COMPLAINT

Comes now the Staff of the Missouri Public Service Commission ("Staff" or "Complainant") by and through its General Counsel, pursuant to Sections 386.390 and 392.240(2) RSMo (Supp. 1997)<sup>1</sup>, and Commission Rule 4 CSR 240-2.070, and for its Complaint against Respondent respectfully states as follows:

COUNT I

1. Long Distance Services, Inc. ("Respondent") is a Delaware corporation duly organized and existing under the laws of the state of Delaware with its principal office and place of business located at 50 W. Big Beaver Road, Suite 136, Troy, Michigan 48084.

2. By its order dated August 4, 1995, the Missouri Public Service Commission ("Commission") issued Respondent a certificate of service authority to provide intrastate interexchange telecommunications services in Missouri in Commission Case No. TA-95-417.

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<sup>1</sup> Hereinafter all references to the Revised Statutes of Missouri will be to the 1994 edition as supplemented through the 1997 cumulative supplement unless otherwise specified.

3. Respondent is an "interexchange telecommunications company," "telecommunications company" and "public utility" providing "telecommunications services" using "telecommunications facilities" as those terms are defined by §§ 386.020 and 392.180 RSMo.

4. Respondent is subject to the jurisdiction, supervision and control of the Commission pursuant to Chapters 386 and 392 RSMo.

5. On approximately four hundred (400) occasions, Respondent has engaged in the switching of a consumer's authorized long distance service provider to Respondent without the consumers' knowledge or consent. This practice is commonly referred to as slamming. The Staff has not incorporated the details of individual complaints against Respondent's actions due to the highly confidential nature of the customer-specific information involved. However, provided the Commission grants the Staff's Motion for Protective Order filed concurrently with this Complaint, the Staff intends to submit the details associated with the Respondent's slamming activities as soon as the information from the Attorney General's Office and the Commission's Consumer Services Department can be consolidated and filed as a confidential exhibit.

6. Section 392.200(3) RSMo prohibits a telecommunications company from unreasonably disadvantaging or prejudicing any person, corporation or locality. Specifically, § 392.200(3) RSMo reads in pertinent part:

**No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever . . . (emphasis added).**

7. Respondent's slamming activities constitute a violation of § 392.200(3) RSMo in that through such slamming activities Respondent unreasonably disadvantaged and prejudiced the telecommunications companies which were rightfully serving the slammed customers.

8. The General Assembly authorized the Commission to not only seek penalties from any telecommunications company found in violation of either § 392.200(3) or § 392.220(6) RSMo but also authorized the Commission to revoke such telecommunication company's certificate of service authority. Specifically, § 392.220(6) reads in pertinent part:

6. If after notice and hearing, the commission determines that a telecommunications company has violated the requirements of section 392.200 or this section, it may revoke the certificate of service authority under which that telecommunications company operates and shall direct its general counsel to initiate an action under section 386.600, RSMo, to recover penalties from such telecommunications company . . . (emphasis added).

9. Section § 392.220(6) RSMo clearly prohibits the activities engaged in by Respondent especially when read in conjunction with § 392.185(6) RSMo. In § 392.185 RSMo the General Assembly sets out the overall intent of Chapter 392. Specifically, § 392.185 RSMo reads in pertinent part:

The provisions of this chapter shall be construed to:  
... (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest. . .

**WHEREFORE**, the Staff respectfully asks the Commission to make findings and orders as follows:

- a) Find that Respondent engaged in slamming activities.
- b) Find that Respondent's slamming activities constituted a violation of § 392.200(3) RSMo in that such slamming activities unreasonably disadvantaged and prejudiced the

telecommunications companies which were rightfully serving the slammed customers prior to Respondent's slamming.

c) Issue its Report and Order: i) revoking Respondent's certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri as provided for under §§ 392.200(3) and 392.220(6) RSMo, and ii) authorizing the Office of the General Counsel to seek the maximum penalties allowed under § 386.600 RSMo.

d) Order such other relief as the Commission may find just and reasonable.

## **COUNT II**

1. Staff hereby adopts and incorporates by reference all allegations contained in Paragraphs 1 through 6 and 8 through 9 of Count I of this Complaint into Count II.

2. Respondent's slamming activities constitute a violation of § 392.200(3) in that by such slamming activities Respondent unreasonably disadvantaged and prejudiced the slammed customers.

**WHEREFORE**, the Staff respectfully asks the Commission to make findings and orders as follows:

a) Find that Respondent engaged in slamming activities.

b) Find that Respondent's slamming activities constituted a violation of § 392.200(3) RSMo in that such slamming activities unreasonably disadvantaged and prejudiced the slammed customers.

c) Issue its Report and Order: i) revoking Respondent's certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri as provided

for under §§ 392.200(3) and 392.220(6) RSMo, and ii) authorizing the Office of the General Counsel to seek the maximum penalties allowed under § 386.600 RSMo.

- d) Order such other relief as the Commission may find just and reasonable.

### COUNT III

1. Staff hereby adopts and incorporates by reference all allegations contained in Paragraphs 1 through 5 of Count I of this Complaint into Count III.

2. Respondent's slamming activities constitute unjust and unreasonable practices.

3. If the Commission determines after a hearing that any telecommunications company is engaging in unjust or unreasonable practices, the Commission is empowered by § 392.240(2) RSMo to issue an order: a) requiring such telecommunications company to stop engaging in such unjust or unreasonable practices, and b) proscribing the manner in which the telecommunications company will perform specific practices in the future. Specifically, § 392.240(2) RSMo reads in pertinent part:

2. Whenever the commission shall be of the opinion, after a hearing . . . , that the rules, regulations or **practices** of any telecommunications company are **unjust or unreasonable**, or that . . . , the commission shall determine the just, reasonable, adequate, efficient and proper regulations, **practices**, equipment and service **thereafter to be installed**, to be observed and **used and to fix and prescribe the same by order** to be served upon every telecommunications company to be bound thereby, and thereafter it shall be the duty of every telecommunications company to be bound thereby, and thereafter it shall be the duty of every telecommunications company to which such order is directed to obey each and every such order so served upon it to do everything necessary or proper in order to secure compliance with and observance of every such order by all its officers, agents and employees according to its true intent and meaning. . . (emphasis added).

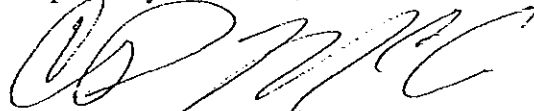
3. In the event the Commission declines to exercise its authority under §§ 392.200(2) and 392.220(6) RSMo to revoke Respondent's certificate of service authority, the Commission

should issue an order expressly prohibiting Respondent from engaging in further slamming as provided for under § 392.240(2) RSMo and authorizing the Office of the General Counsel to seek penalties under § 386.600 RSMo.

**WHEREFORE**, in the event the Commission declines to exercise its authority under §§ 392.200(2) and 392.220(6) RSMo to revoke Respondent's certificate of service authority, the Staff respectfully asks the Commission to make findings and orders as follows:

- a) Find that Respondent engaged in slamming activities.
- b) Find that Respondent's slamming activities constituted unjust or unreasonable practices.
- c) Issue its Report and Order: i) expressly prohibiting Respondent from engaging in further slamming as provided for under § 392.240(2) RSMo; and ii) authorizing the Office of the General Counsel to seek the maximum penalties allowed under § 386.600 RSMo.
- d) Order such other relief as the Commission may find just and reasonable.

Respectfully submitted,

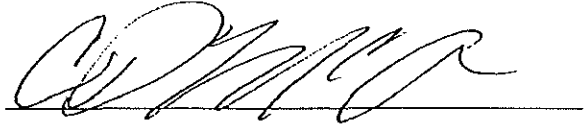


Cherlyn D. McGowan  
Assistant General Counsel  
Missouri Bar No. 42044

Attorney for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, Missouri 65102  
(573) 751-3166  
(573) 751-9285 (fax)

### CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 9<sup>th</sup> day of February, 1998.

A handwritten signature in cursive script, appearing to read "C. J. Miller", is written over a horizontal line.



Service List for Complaint and Motion For Protective  
Order  
Staff of MoPSC vs. Long Distance Services, Inc.  
As of February 9, 1998

Legal Department  
Long Distance Services, Inc.  
50 West Big Beaver Road, Suite 136  
Troy, Michigan 48084

James Fischer  
Attorney At Law  
101 West McCarty, Suite 215  
Jefferson City, MO 65101

Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

RECEIVED

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COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION