

**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

FILED
JUN 28 1999
Missouri Public
Service Commission

STIPULATION AND AGREEMENT

I. PROCEDURAL HISTORY

The Missouri Public Service Commission (Commission) established this docket for consideration of a complaint filed by Commission Staff (Staff) against Long Distance Services, Inc. (LDSI) on February 9, 1998 (Complaint). Staff's Complaint was based on slamming complaints against LDSI received by the Commission and the Missouri Attorney General. Specifically, approximately four hundred (400) Missouri citizens lodged complaints against LDSI alleging that it had slammed each such customer, or more specifically, switched each such citizen's authorized long distance service provider to LDSI without the citizen's knowledge or consent in violation of §§392.200(3) and 392.240(2) RSMo.

On February 11, 1998, the Commission issued its *Notice of Complaint and an Order Establishing Protective Order*. The Commission subsequently issued an *Amended Notice of Complaint* on March 6, 1998. On March 10, 1998, LDSI timely filed its Answer and a separate pleading containing its affirmative defenses.

On March 25, 1998, the Commission issued its *Order Setting Early Prehearing Conference* which, among other things, scheduled an early prehearing conference for April 14, 1998 and required the parties to file a proposed procedural schedule by April 21, 1998. A prehearing conference was held as scheduled on April 14, 1998, and Staff filed a proposed procedural schedule on April 21, 1998 which the Commission subsequently approved on May 14, 1998. In compliance with the Commission's May 14, 1998 Order, Staff filed the direct testimony of William L. Voight on June 2, 1998, and LDSI filed the rebuttal testimony of Allan M. Barash on July 20, 1998.

As set out in Staff witness William L. Voight's direct testimony filed in this docket, during the course of Staff's investigations, Staff became aware that LDSI was: (a) in bankruptcy proceedings and (b) engaged in negotiations with the Attorneys General from several states (Attorneys General) seeking to settle all slamming complaints previously lodged against LDSI and to allow LDSI to continue offering long distance telecommunications service during and following its bankruptcy.

To allow the Attorneys General and LDSI to finalize their settlement negotiations, Staff and LDSI filed a Joint Motion to Amend Procedural Schedule and in response to that motion the Commission adopted the procedural schedule by its Order dated August 21, 1998. In compliance with the Commission's August 21, 1998 Order, Staff filed the surrebuttal testimony of Mr. William L. Voight on September 14, 1998.

Because the negotiations between LDSI and the Attorneys General were not concluded as quickly as anticipated, Staff filed its Motion to Suspend Procedural Schedule on September 29, 1998. In response to that motion, the Commission issued its *Order Suspending Procedural Schedule* on October 1, 1998 which, among other things, canceled the existing procedural

schedule and required Staff to file either a joint stipulation and agreement or hearing memorandum and proposed procedural schedule on or before December 1, 1998.

Due to additional delays, the negotiations between LDSI and the Attorneys General were again not concluded as quickly as anticipated and Staff and LDSI filed a Joint Motion for Extension of Time To File Stipulation and Agreement or Hearing Memorandum on November 30, 1998. In response to that motion, the Commission issued its *Order Regarding Joint Motion for Extension of Time to File Stipulation and Agreement or Hearing Memorandum* on December 16, 1998 which, among other things, required Staff to file either a joint stipulation and agreement or hearing memorandum and proposed procedural schedule on or before April 9, 1999.

On March 8, 1999, LDSI and the Attorneys General from Missouri, Alabama, Arkansas, Georgia, Illinois, Indiana, New York, Ohio, and Tennessee (Attorneys General) filed a unanimous bankruptcy Settlement Agreement (Settlement Agreement) which the Bankruptcy Court approved. Subsequently, LDSI and the Attorneys General made several revisions to the Settlement Agreement. Staff received the final draft of the Settlement Agreement on May 21, 1999.

Subsequently, Staff drafted a Stipulation and Agreement based on terms set forth in the Settlement Agreement. Staff faxed a copy of this Stipulation and Agreement to LDSI's attorney for approval on June 2, 1999. The Commission issued an *Order Directing Staff to File Memorandum Regarding Case Status* on June 18, 1999. On June 24, 1999, LDSI's attorney faxed to Staff a copy of the Stipulation and Agreement which was signed by LDSI's president, Allan M. Barash. On June 25, 1999, LDSI's attorney signed and faxed Staff a copy of the Stipulation and Agreement.

II. STIPULATIONS AND AGREEMENTS

As a result of numerous discussions and meetings among the parties, without conceding the legal merits of any of Staff's allegations of violation, the signatories hereto stipulate and agree as follows:

1. LDSI 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 Commission issued LDSI a certificate of service authority to provide intrastate interexchange telecommunications services in Missouri in Commission Case No. TA-95-417.

3. LDSI 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. 1994. LDSI is subject to the jurisdiction, supervision and control of the Commission pursuant to Chapters 386 and 392 RSMo.

4. Approximately four hundred (400) Missouri citizens lodged complaints against LDSI with either the Missouri Attorney General or the Commission alleging that LDSI had slammed each such customer, or more specifically, switched each such citizen's authorized long distance service provider to LDSI without the citizen's knowledge or consent.

5. LDSI acknowledges that some or all of the citizens filing complaints were slammed in that their long distance provider was switched to LDSI without their consent or knowledge. However, LDSI denies that it knowingly or intentionally slammed any of the citizens in question.

6. On March 8, 1999, LDSI and the Attorneys General from Missouri, Alabama, Arkansas, Georgia, Illinois, Indiana, New York, Ohio, and Tennessee filed a unanimous bankruptcy Settlement Agreement (Settlement Agreement) which the Bankruptcy Court approved. A copy of the Settlement Agreement is attached hereto as Appendix A. The Settlement Agreement, among other things, will: a) settle all slamming complaints previously lodged against LDSI; b) allow LDSI to continue offering long distance telecommunications service during and following its bankruptcy; c) require LDSI to release \$2,750,000 into a restitution fund to be distributed by the Attorneys' General to reimburse, to the extent possible, the slammed citizens who filed complaints; d) require LDSI to institute stringent verification methods to ensure that any and all customer requests for LDSI services are valid.

7. LDSI agrees to comply with all terms of the bankruptcy Settlement Agreement and the Stipulation and Agreement. In the event LDSI violates the terms of either the bankruptcy Settlement Agreement or the Stipulation and Agreement, LDSI will relinquish automatically its interexchange certificate(s) for cancellation and its tariff(s) will be revoked automatically.

8. LDSI agrees to maintain for a period of at least two (2) years, and produce to the Missouri Public Service Commission within thirty (30) days of receipt of written notice to produce the same, the following:

A. all scripts of telephonic solicitations, advertisements, solicitations, publications, circulars, or marketing or promotional materials of any description whatever, circulated or distributed within the State of Missouri, which are intended to solicit consumers to authorize any change of telecommunications carrier, or the provision or rendition of any telecommunications service or enhanced telecommunications service;

B. proof of verification of all changes of telecommunications carrier initiated by LDSI, and proof of verification of all authority purportedly granted to LDSI by any consumer to provide or render telecommunications service. Such proof shall include, but is not limited to, the voice tape recording of all independent verifications; as required in ¶21 and ¶22 of the *Consent Judgment and Permanent Injunction*.¹

C. all documents relating to written complaints or telephonic complaints from consumers received by LDSI by any state agency that are forwarded by that agency in writing to LDSI, including the disposition of such complaint by LDSI; and

D. all affidavits required in ¶31 of the *Consent Judgment and Permanent Injunction*.

9. If, after the date of a Commission Order Approving the Stipulation and Agreement, the Missouri Attorney General's Office or the Missouri Public Service Commission receives as few as one (1) complaint (written or verbal) against LDSI, then LDSI agrees, upon written notice to it or its attorney(s) of the complaint, to conduct a prompt and thorough investigation to determine what caused the complaint and to take prompt remedial measures to correct the causing factor(s). Within ten (10) business days of receiving the complaint, LDSI agrees to report in writing to the Missouri Public Service Commission a description of its investigation, findings, and corrective measures. This investigation and report are in addition to any other obligations herein. If, after the date of a Commission Order Approving the Stipulation and Agreement, the Missouri Attorney General's Office or the Missouri Public Service Commission receives a minimum of five (5) complaints (written or verbal) against LDSI within any sixty (60) day period, then LDSI, upon written request by the Missouri Public Service Commission to LDSI, or its attorneys, agrees to suspend within ten (10) days of the mailing of

¹ The *Consent Judgment and Permanent Injunction* is attached hereto as part of Appendix 1.

the request, all marketing and new sales in this State. In addition, if the Missouri Public Service Commission has requested suspension under this provision, then LDSI, separately and severally, agrees to consent to the entry of an order permanently enjoining it from operating any business enterprise within this State, unless and until, it files with the Missouri Public Service Commission a performance bond issued by a surety or bonding company licensed by and in good standing with the applicable state regulatory agency and in a sum sufficient to guarantee that LDSI will comply with the terms herein, but in no event less than \$5,000,000. This remedy shall be in addition to any other remedy available at law or in equity, including but not limited to civil penalties pursuant to §386.570 RSMo. 1994.

10. None of the signatories to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation, depreciation, revenue related methodology, any service or payment standard, and none of the signatories shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding, except as otherwise expressly specified herein.

11. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission approves this Stipulation and Agreement with modifications or conditions that a party to this proceeding objects to prior to the effective date of the Order approving this Stipulation and Agreement, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

12. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties waive, with respect to the issues resolved herein: their respective rights

pursuant to §536.080.1 RSMo. 1994 to present testimony, to cross-examine witnesses and to present oral argument and written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 RSMo. 1994; and their respective rights to judicial review pursuant to §386.510 RSMo. 1994; and the customary ten (10) day period between the issuance of the Commission's *Report and Order* and the effective date.

13. The parties agree that all of the prefiled testimony submitted by LDSI and Staff shall be received into evidence without the necessity of their respective witnesses taking the stand.

14. Within ten (10) business days following the filing of this Stipulation and Agreement, the Staff shall file and submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record shall be served with a copy of the memorandum and shall be entitled to submit to the Commission, within five (5) business days of receipt of Staff's memorandum, a responsive memorandum that shall also be served on all parties. All memoranda submitted by the individual parties shall be filed with the Commission and shall become a part of the record of this proceeding but shall not bind or prejudice the Party submitting such memorandum in any future proceeding, whether or not the Commission approves this Stipulation and Agreement. The contents of any individual memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation and Agreement. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, promptly provide other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation

once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

15. Because LDSI maintains that it will not be able to pay the large monetary refund called for under the bankruptcy Settlement Agreement unless it can continue to operate as a long distance carrier in Missouri and several other key states, the bankruptcy Settlement Agreement is conditioned upon this Commission accepting the terms of this Stipulation. Accordingly, in the event the Commission is unable or unwilling to issue an order adopting this Stipulation, the bankruptcy Settlement Agreement is voidable by LDSI and LDSI may at its option agree to be bound to the terms of a modified Settlement Agreement or release itself from any obligations contained in the Settlement Agreement.

WHEREFORE, for the foregoing reasons, the undersigned parties respectfully request that the Commission issue its Order approving all of the specific terms and conditions of this Stipulation and Agreement.

Respectfully Submitted this 28th day of June, 1999.

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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 28th day of June 1999.

Julie Kardis