(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF THE APPLICATION OF LDM SYSTEMS, INC.  FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL EXCHANGE SERVICE AS A COMPETITIVE LOCAL CARRIER. | )  )  )  )  )  ) | CASE NO. LDM-T-97-1  ORDER NO.27356 |

On March 5, 1997, the Commission received an Application from LDM Systems, Inc. for a Certificate of Public Convenience and Necessity to provide resold local exchange service as a competitive local carrier throughout the state of Idaho.

In Order No. 27295 issued December 31, 1997, the Commission found that this matter could be processed under Modified Procedure and requested interested persons file written comments regarding the Application by January 28, 1998.   Staff, U S WEST Communications, Inc., and the Idaho Telephone Association filed comments on January 28, 1998.  LDM filed its  response to those comments on February 20, 1998.  No other person filed comments.

Based upon a review of the Application and the Staff’s comments, the Commission suspends consideration of LDM Systems, Inc.’s Application until such time as LDM presents credible evidence to the Commission that the corrective actions taken recently by LDM have rectified its admitted “slamming” problems.

BACKGROUND

LDM Systems, Inc. is a New York corporation qualified to do business in Idaho and is a non-facilities-based reseller of telecommunications services.  LDM filed a price list for long distance services with the Commission in September 1994.

On March 5, 1997, LDM filed an Application with the Commission for a Certificate of Public Convenience and Necessity to provide resold local exchange telecommunications services as a competitive local carrier within Idaho and also requested an exemption from the requirements of Idaho Code § 62-610 and “IDAPA 31.N Rule 3 [sic].”  On September 15, 1997, LDM filed supplemental information in further support of its Application and revised its Application to restrict its services to only those areas currently served by U S WEST Communications, Inc. (North and South) and GTE Northwest Incorporated, as reflected in U S WEST’s and GTE’s current Certificates.  On September 15, 1997, LDM also filed its proposed initial tariff with the Commission for information purposes pursuant to Idaho Code § 62-606.

According to information in its Application, LDM currently provides resold long distance telecommunications services throughout the continental United States and in Idaho.

Idaho Consumer Complaints for Interexchange Service in Idaho.

While Staff found that the information provided by LDM in its Application and the additional material provided in support of its Application meets the minimum Commission  requirements for a Certificate,(footnote: 1) it also found that LDM had experienced a significant consumer slamming problem.  Because LDM presently provides interexchange service in Idaho, Staff reviewed the Commission’s Consumer Assistance Staff complaint records to evaluate Idaho consumer experiences with LDM.  There were 24 informal complaints, comments and inquiries concerning LDM’s interexchange service in 1996 and 1997.  Since Staff does not know the total number of LDM interexchange customers, it could not fully evaluate consumers’ problems.  However, in Staff’s experience, normally the number of complaints received by the Commission’s Consumer Assistance Division does not accurately reflect the magnitude of consumers’ problems.

Staff found a pattern to consumers’ complaints and the Commission agrees.  Twenty-two (22) out of the twenty-four (24) complaints involved either clear allegations of slamming (the unauthorized switching of interexchange carriers) or allegations that LDM’s sales representatives misrepresented themselves as agents for Sprint or the local exchange carrier.  Although LDM denied intentionally misleading or slamming customers, it acknowledged that its use of independent sales agents, and especially telemarketers, created reliability problems concerning carrier changes.  Since, at that time, LDM did not propose altering its procedures, the Staff stated it had no basis for believing that similar slamming problems would not occur in the local exchange marketplace.

Staff also noted that LDM experienced a similar pattern to its slamming complaints in its national market.  According to the Federal Communications Commission Common Carrier Scorecard Report dated December 1997, LDM experienced the third highest number of slamming complaints per million dollars in total revenue.  In fact, according to that same report, out of 246 consumer complaints, 245 were slamming complaints.  The Commission finds that this pattern is repeated in Idaho.

Based on the pattern of Idaho’s customer complaints, Staff initially recommended LDM Systems, Inc. be denied a Certificate of Public Convenience and Necessity to provide local exchange telecommunications services within the U S WEST and GTE service territories or, in the alternative, granted a Certificate subject to certain conditions.  Based on LDM’s Reply filed February 20, 1998, Staff amended its recommendation.  Staff no longer objects to LDM obtaining a Certificate so long as issuance of the Certificate is conditioned as follows:

1.Prior to switching the consumer’s local exchange service, LDM Systems, Inc. must obtain written authorization from the consumer to switch to LDM, and

2.LDM Systems, Inc. must submit a quarterly report to the Commission that reports the number of consumer complaints made to LDM and states the general subject matter and disposition of those complaints.

3.That LDM Systems, Inc. retain the original written authorizations from the consumer for a period of three years and provide a copy of that authorization in response to consumer or IPUC Staff request.

LDM Systems, Inc.’s Reply

While LDM agreed with Staff that it had experienced problems with “slamming,” LDM asserted that it has taken steps to correct those problems.  It suggested that these corrective steps are consistent with Staff’s alternative recommendation and, therefore, agreed to Staff’s recommended conditions — written authorizations confirming a consumer’s agreement to switch local exchange service and submission of quarterly reports pursuant to Rules 401 and 402.  LDM Reply at p. 2.

LDM suggested its slamming problems were endemic in the industry and questioned Staff’s construction of its record as reflected in the FCC Scorecard.  LDM alleged that the July 1997 creation of a compliance division to monitor its telemarketers and the elimination of verbal orders has resolved its slamming problems.

COMMISSION FINDINGS

Based on the Commission’s review of the record, including all the written comments filed by Staff, U S WEST Communications, Inc., Idaho Telephone Association and LDM Systems, Inc., the Commission finds that consideration of LDM Systems, Inc.’s Application should be suspended.  LDM is already providing resold interexchange service in Idaho and after thoroughly reviewing the record, the Commission finds there is a disturbing pattern to consumers’ complaints against LDM.  Nearly all of its consumer complaints (22 out 24) stem from improper switching of customer service or “slamming.”  Slamming—the unauthorized switching of customers—is a terrible problem for consumers and a growing concern for the Commission.

The Commission finds it would be dilatory in its duty if it did not take strong action where slamming is alleged.  It is not in the public’s interest to issue any new carrier a Certificate of Public Convenience and Necessity to provide local telecommunications service where that carrier already  has a strong history of slamming consumers in Idaho.  In this case, LDM has a strong history of slamming Idaho consumers and this pattern is repeated nationwide.  While LDM has taken some steps to rectify its slamming problems, the Commission finds that it is too soon to know whether LDM’s actions will reduce its slamming complaints.

The Commission finds that until LDM provides it with clear evidence that these newly adopted procedures reduce its consumers’ complaints, it will not issue LDM a Certificate of Public Convenience and Necessity for resold local exchange service as a competitive local carrier in Idaho.

O R D E R

IT IS HEREBY ORDERED that the Commission suspends consideration of the Application of LDM Systems, Inc. for a Certificate of Public Convenience and Necessity to provide local telecommunications service in the areas served by U S WEST and GTE.

IT IS FURTHER ORDERED thatthis docket will remain open to allow LDM to renew consideration of its Application when it demonstrates it has resolved these problems.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of February 1998.

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**FOOTNOTES**

1:

See Rule of Procedure 111, IDAPA 31.01.01.111, and Procedural Order No. 26665, issued November 7, 1996.

**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

March 2, 1998