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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  COMMENTS OF THE  COMMISSION STAFF |

COMES  NOW  the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Cheri C. Copsey, Deputy Attorney General, in response to Order No. 27295, the Notice of Application and Notice of Modified Procedure in Case No. LDM-T-97-1, issued December 31, 1997, submits the following comments.

BACKGROUND

LDM Systems, Inc. is a New York corporation qualified to do business in Idaho.  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 31.46.02.302.  LDM originally applied to provide service throughout all Idaho.  However, on September 15, 1997, LDM 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 Inc., as reflected in U S WEST’s and GTE’s current Certificates.

On September 15, 1997, LDM filed its proposed initial tariff with the Commission for information purposes pursuant to Idaho Code § 62-606.  LDM stated service will be provided through resale of services provided by the incumbent local exchange carrier and LDM stated it intends to provide all forms of intrastate telecommunications services, including:

Basic residential exchange services (local exchange flat rate, measured flat rate, operator assistance)

Residential custom calling and class features (call waiting, caller ID, call forwarding, etc.)

Basic business exchange services

Business custom calling and class features

Adjunct provider services (voice message, etc.)

Business and residential ancillary services (911, directory listing, directory assistance, etc.)

LDM filed supplemental financial information on November 11, 1997.  LDM stated it had not yet initiated negotiations with incumbent local exchange carriers for interconnection agreements.

STAFF FINDINGS

The Commission’s Rule of Procedure 111, IDAPA 31.01.01.111, and Procedural Order No. 26665, issued November 7, 1996, establish the minimum information that must be included with an application for a Certificate of Public Convenience and Necessity.  Staff finds that the information provided by LDM in its Application and the additional material provided in support of that Application meet these requirements.

LDM is headquartered in New City, New York and is a non-facilities based reseller of telecommunications services.  It originally filed a price list for long distance services with this Commission in September 1994.  The Application included an audited balance sheet for December 31, 1995, and an unaudited income statement for the first 10 months of 1996.  According to the 1995 audited balance sheet, assets exceeded liabilities.  The unaudited 10 month income statement showed net sales of more than $23 million and net income of nearly $2.5 million.

According to information in LDM’s Application, LDM currently provides re-sold long distance telecommunications services throughout the continental United States.  Staff concludes this background should provide sufficient technical expertise for a reseller of local telecommunications services.

LDM specifically stated it will comply with all Commission rules.  Its illustrative tariff filed with the Commission on September 15, 1997, demonstrates an understanding of tariffing requirements and processes.

As part of its review of this Application, Staff examined the Commission’s Consumer Assistance Staff complaint records.  There were 24 informal complaints, comments and inquiries regarding LDM’s interexchange service for 1996 and 1997.  Because Staff does not know the total number of LDM customers it cannot assess the total extent of the problem.  However, it has been Staff’s experience that the number of complaints received by the Commission do not accurately reflect the total magnitude of problems.

These Staff records contain electronically documented conversations with LDM’s customers and various telecommunications companies’ representatives, correspondence, bills, and other written materials.  The primary areas of concern expressed by Idaho consumers involve rates, billing, marketing practices, and carrier selection, including “slamming,” the unauthorized switching of interexchange carriers.  The majority of the complaints (22 out of 24) involved either clear allegations of slamming or the consumer alleged that LDM’s sales representatives misrepresented themselves as being agents for Sprint or the local exchange company that serves the consumer.  LDM denied intentionally misleading or slamming customers.  However, it acknowledged that it had reliability problems associated with soliciting orders through independent sales agents, especially through telemarketing.  Since LDM offered no solution to its admitted slamming problem, there is no basis for believing that similar slamming problems won’t occur in the local exchange marketplace.

Attached to the Staff Comments is a copy of Appendix B to the Federal Communications Commission Common Carrier Scorecard Report dated December 1997.  Attachment 1.  According to that document, LDM has a significantly high level of consumer complaints filed against it with the Federal Communications Commission regarding allegations of slamming.  LDM had the third highest number of slamming complaints among resellers filed with the FCC.

LDM also requested the Commission grant it an “exemption” from the Universal Service Fund requirements, because it argues it will operate solely as a reseller and its contributions to the Universal Service Fund will be made by its underlying carriers, U S WEST and GTE.  LDM did not provide any documentation that it is currently a customer of GTE or U S WEST or that either GTE or U S WEST will remit all of LDM’s contributions to the fund.  Local Exchange Carriers that request an exemption may be granted exemptions only “upon the grounds that the LEC provides such a small number of local service lines in Idaho and generates such a small monthly surcharge that neither the practical administration of the USF nor the public interest requires monthly remittances.”  IDAPA 31.46.01.401.01.

STAFF RECOMMENDATION

Based upon Staff’s experience with LDM’s practices in obtaining long distance customers through slamming, Staff recommends LDM Systems, Inc. be denied a Certificate of Public Convenience and Necessity to provide local exchange telecommunications services within the service territories of U S WEST and GTE.  Alternatively, Staff recommends LDM be granted a Certificate on the condition that it obtain written authorization to switch local exchange service from consumers prior to taking whatever steps are necessary to change the consumer’s service and on the further condition that it submit a quarterly report to the Commission that states and classifies the number of complaints made to the telephone company pursuant to Rules 401 and 402 and the general subject matter of the complaints.

If the Commission decides to grant LDM a Certificate, Staff further recommends no exemption for Universal Service Fund contributions (as well as TRS fund contributions) be granted because LDM has not established that it “provides such a small number of local service lines in Idaho and generates such a small monthly surcharge that neither the practical administration of the USF nor the public interest requires monthly remittances.”  IDAPA 31.46.01.401.01.

DATED  at Boise, Idaho, this            day of January 1998.

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Cheri C. Copsey

Deputy Attorney General

Technical Staff:  Wayne Hart

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