

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by CITIZENS OF)	DOCKET NO. 890485-TL
FLORIDA to compel compliance with)	
Rule 25-14.003, F.A.C., by UNITED)	ORDER NO. 22060
TELEPHONE COMPANY OF FLORIDA regarding)	
calculation of and method for)	ISSUED: 10-16-89
refunding 1988 tax savings)	
)	

The following Commissioners participated in the disposition of this matter:

- MICHAEL McK. WILSON, Chairman
- THOMAS M. BEARD
- BETTY EASLEY
- GERALD L. GUNTER
- JOHN T. HERNDON

NOTICE OF PROPOSED AGENCY ACTION
AND
ORDER DENYING PETITION AND DISMISSING MOTION

BY THE COMMISSION:

Notice is hereby given by the Florida Public Service Commission of its intent to find that no further action is warranted in this docket under Rule 25-14.003, Florida Administrative Code (the Tax Rule), and to deny and dismiss the pleadings filed in this docket by the Office of Public Counsel (OPC). These actions are preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for formal proceeding pursuant to Rule 25-22.029.

By Order No. 19726, issued July 26, 1988, in Dockets Nos. 871206-PU, 880444-TL and 861616-TL, we proposed to authorize for United Telephone Company of Florida (United) a rate of return on equity (ROE), with a midpoint of 13.5%, for 1988 and 1989. Further, we required United to record additional depreciation expense in an amount sufficient to reduce its earned ROE by 100 basis points, and we established an earnings cap of 14.5%. On April 10, 1989, OPC filed a Petition requesting that we order United to refund a portion of its 1988 revenues under the Tax Rule. The Petition asserts that the Tax Rule requires a refund of United's tax savings in excess of the midpoint ROE of 13.5% authorized by Order No. 19726. OPC also contends that the refund must be made as a lump sum payment or

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in monthly installments and that any access charge reduction is immaterial by the terms of the Tax Rule and by application of Order No. 19726.

On May 2, 1989, United filed an Answer to the Petition, arguing that its access charge reduction resolved the tax savings issue. The Answer contends that the Petition should be rejected because Order No. 17429, issued April 20, 1987, required the company to reduce its access charges and to record additional depreciation expense for 1987 in order to offset tax savings. Additionally, United points out that Order No. 19726 excused the company from further participation in Docket No. 871206-PU, which is our investigation into the 1988 effects of the Tax Reform Act of 1986 (the Act).

On May 8, 1989, OPC filed a Motion for Judgment on the Pleadings, requesting that we affirm Order No. 19726 and apply the Tax Rule with a midpoint ROE of 13.5% for the purpose of disposing of United's 1988 tax savings. On May 19, 1989, United filed its Response.

Upon review, we find that Order No. 17429, which addressed several dockets and many issues, had the primary effect of reducing carrier common line access charges in recognition of the tax savings resulting from the Act and in lieu of the strict application of the Tax Rule. The effects of both the access charge reduction and the Act continue into 1988 and beyond. When we approved the reduction in United's access charges, we viewed this action as an acceptable disposition of tax savings. At the time of this action, we expected the access charge reduction to have an ongoing impact on United's tax savings. Accordingly, our action in reducing United's access charges in 1987 must be considered in determining whether the company's 1988 tax savings have been properly disposed of.

The first step in applying the Tax Rule is to determine the amount of a company's tax savings and then to determine if any of that amount has been disposed of through Commission action. If any tax savings remain after such action has been considered, then the Tax Rule requires that an earnings test be applied to find if any additional refund is necessary. We have reviewed the March 31, 1989 tax savings report submitted by United which indicates that 1988 tax savings were \$14,448,254 and concluded that this calculation is accurate. The company

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also claims that its 1988 revenues were reduced by \$14,738,446 as a result of the access charge reduction implemented in 1987. Our review of United's calculation of the effect of the access charge reduction on its 1988 revenues has located no discrepancies. In light of these conclusions, we believe that the entire amount of United's 1988 tax savings was disposed of through the access charge reduction.

If this had not been the case, then we would proceed with the application of the Tax Rule, using 13.5% as United's authorized midpoint for determining any refund. We are aware that the access charge reduction may not be sufficient to offset United's tax savings in future periods; therefore, we intend to apply the Tax Rule through a year-by-year analysis. However, we will take no further action in this docket with regard to the Tax Rule because United's entire 1988 tax savings amount has been disposed of.

As found above, access charge reductions are relevant to the issue of whether a company's tax savings have been dealt with. Based on our belief that United has no excess 1988 tax savings available for disposition, we deny the Petition. We believe that a reduction in rates which goes into effect in time to prevent overpayment by ratepayers is preferable to a cash refund because the customer never overpays the company.

In the Motion, OPC argues that we should focus on whether a 13.5% ROE midpoint should be used in applying the Tax Rule. Only after that issue has been resolved, according to the Motion, should we inquire into the company's disposition of its tax savings. We disagree with OPC's interpretation of how the Tax Rule should be applied. In our opinion, it becomes applicable only if rate reductions have not already disposed of tax savings. If United had experienced tax savings in excess of its revenue decreases associated with its access charge reductions, then we would have applied the Tax Rule employing a midpoint ROE of 13.5% in accordance with Order No. 19726. Since no excess tax savings are available, the Motion is dismissed.

Therefore, based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that the carrier common line rate reduction ordered in Order No. 17429, issued April 20, 1987, has appropriately disposed of United Telephone Company of Florida's tax savings for 1988. It is further

ORDERED that no further action is necessary under Rule 25-14.003, Florida Administrative Code, with respect to United Telephone Company of Florida's 1988 tax savings which were adequately disposed of through reductions in the company's 1988 revenues associated with the carrier common line rate reduction; provided, however, that this Rule will be addressed at the appropriate time for 1989 and future periods. It is further

ORDERED that the Office of the Public Counsel's Petition to Compel Compliance with Commission Rule 25-14.003 by United Telephone Company of Florida filed on April 10, 1989, is hereby denied. It is further

ORDERED that the Office of the Public Counsel's Motion for Judgment on the Pleadings filed May 8, 1989, is hereby dismissed. It is further

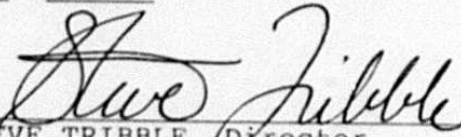
ORDERED that the terms of this order are severable and the finding that no further action is warranted in this docket under Rule 25-14.003, Florida Administrative Code, and the denial and dismissal of the pleadings filed in this docket by the Office of Public Counsel are Proposed Agency Action. It is further

ORDERED that this docket will be closed upon the expiration of the protest period established below if no proper protest is timely filed. It is further

ORDERED that the interpretation in this order that the carrier common line access charge reduction implemented by United Telephone Company of Florida in 1987 is a relevant consideration in determining whether the company's 1988 tax savings have been properly disposed of shall be considered Final Agency Action.

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By ORDER of the Florida Public Service Commission,
this 16th day of OCTOBER, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DLC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our finding that no further action is warranted under Rule 25-14.003, Florida Administrative Code, with respect to United Telephone Company of Florida and our denial and dismissal of the pleadings filed in this docket by the Office of Public Counsel are preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records

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and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on November 6, 1989

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.