8

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the requirements appropriate for alternative operator services and public telephones	)	DOCKET NO. 871394-TP ORDER NO. 24606 ISSUED: 6/3/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON
GERALD L. GUNTER
MICHAEL McK. WILSON

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING REFUND THROUGH PROSPECTIVE RATE REDUCTION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

By Order No. 19095, issued April 4, 1988, we directed all alternative operator services (AOS) providers to hold subject to refund all revenues collected in excess of the most comparable local exchange company (LEC) rate, effective February 2, 1988.

On May 4, 1988, Central Corporation (Central) challenged the imposition of the refund, arguing that it constituted an invalidly promulgated rule. In a proceeding before the Florida Division of Administrative Hearings (DOAH), the Hearing Officer ruled on June 24, 1988, that the refund provision was indeed a rule and, therefore, invalid for failure to follow the rulemaking provisions of Chapter 120, Florida Statutes. Our position, however, was that the refund requirement was imposed pursuant to our authority to implement interim rates. Subsequently, we appealed the DOAH ruling to the First District Court of Appeal (First DCA).

On December 21, 1988, we issued Order No. 20489, our final order following the hearing in this docket. At that time, our appeal to the First DCA was still pending. In Order No. 20489, we set rate caps for AOS providers and we upheld our refund requirement, based upon the evidence we received during the

hearing. Accordingly, we directed that the refund be implemented through a prospective rate reduction, with further details pending a ruling from the First DCA. The excess revenues subject to refund were to be those collected from February 2, 1988, as determined in Order No. 19095, through November 17, 1988, the date of our Special Agenda following the hearing.

International Telecharge, Inc. (ITI or the Company), as well as a number of other parties, filed a motion for reconsideration of Order No. 20489. In addition, ITI requested a stay of the AOS rate cap, pending disposition of the motions for reconsideration. By Order No. 21051, issued April 14, 1989, we granted a stay of our rate cap, but conditioned the stay upon the posting of a bond or corporate undertaking. ITI filed a Notice of Corporate Undertaking on April 25, 1989, so that it would be able to continue charging rates above the capped level during the pendency of reconsideration. By Order No. 21396, we approved ITI's request, subject to the Notice of Corporate Undertaking. No other parties requested permission to continue charging at their old rate levels pending reconsideration.

On October 19, 1989, the First DCA filed its opinion in our appeal of the DOAH ruling. In a sharply divided 2-1 decision, the First DCA affirmed the order of the DOAH Hearing Officer.

At our November 7, 1989, Agenda Conference, we considered the numerous motions for reconsideration that had been filed in response to Order No. 20489. At the time of that Agenda Conference, we had not yet reached a decision on whether we should pursue additional avenues of judicial review following the adverse decision of the First DCA. Accordingly, in Order No. 22243, issued November 29, 1989, following this Agenda Conference, we deferred any further rulings relative to the refund issue. Additionally, by Order No. 22243, we affirmed the AOS rate cap and required ITI to file a conforming tariff. Moreover, we directed ITI to compute the difference between the rates it had charged while reconsideration was pending and our rate cap, and to refund the excess directly to the entities originally billed.

Subsequently, we determined that we would not pursue any additional form of judicial review following the decision of the First DCA. On November 21, 1989, the Clerk of the First DCA issued mandate. By Order No. 23018, we directed that revenues being held subject to refund pursuant to Order No. 19095 be released, as the

ruling of the First DCA had the effect of negating the refund requirement of Order No. 20489.

ITI then appealed Orders Nos. 20489 and 22243. On January 15, 1991, the Supreme Court of Florida upheld our decisions on all issues appealed, except for the requirement in Order No. 22243 that ITI make direct refunds to the entities originally billed. The Court reversed this portion of our decision and remanded the case for further proceedings consistent with the Court's opinion.

Refund Amount

On January 3, 1990, ITI filed a refund report in which it identified the amounts to be refunded and proposed a refund process. The Company proposes to refund $408,469 (corrected to $413,582) associated with customer surcharges and MTS charges in excess of AT&T's rates. In arriving at this amount, ITI made three assumptions. First, its revenue recalculations were made for the period from April 25, 1989, through November 30, 1989. ITI contends that April 25th is the appropriate starting point since this was the date that conforming AOS tariffs ultimately were required to be filed. Second, the refund calculations do not include those calls where ITI provided operator services to another interexchange carrier (IXC) under contract. In such instances, according to the Company, it bills and collects on behalf of the IXC, but its compensation is based only on the operator surcharges assessed, not the total charges. Third, the Company's refund calculations exclude charges associated with calls billed through local exchange companies (LECs) outside of Florida. In addition to questioning whether this Commission has the authority to exercise control over the billing and collection practices of non-Florida LECs, ITI asserts that significant efforts would be required by the out-of-state LECs to refund these amounts.

In order to determine the dollar amount that ITI should be required to refund, it is necessary: (1) to specify the time period for which the computations should be made; and (2) to identify the specific billing units subject to the calculations.

By Order No. 21051, we stayed the rate cap portion of Order No. 20489 pending reconsideration, conditioned upon the posting of bond or corporate undertaking. On April 25, 1989, ITI filed its Notice of Corporate Undertaking, which we subsequently approved by Order No. 21396. In Order No. 22243, we refused to reconsider our

AOS rate cap decision and we ordered ITI to refile its tariff. Accordingly, refund calculations shall be for the period from April 25, 1989, through November 30, 1989.

Order No. 22243 indicates that the Company is to refund the excess revenues associated with MTS and related operator surcharges, and any premises surcharges billed or collected on behalf of its clients. As noted above, ITI contends that two categories of calls originating and terminating in Florida should be excluded in computing the refund: (1) those ultimately billed to end users via out-of-state LECs; and (2) those provided to another IXC under contract. Regarding the first category, we find that an intrastate call billed out-of-state is nevertheless an intrastate call. These calls were charged at ITI's excessive intrastate rates, and this Commission has jurisdiction over ITI's intrastate rates and charges. We need not address the question of attempting to recoup excess charges from out-of-state LECs; rather, we shall exercise our authority over ITI relative to such calls.

In addition, we shall hold ITI responsible for those calls which it billed under contract on behalf of another IXC. Here, during the period in question, ITI billed certain calls on behalf of ITT-Metromedia under ITI's name and at ITI's rates for MTS and operator surcharges. Since the Company's excessive rates resulted in the overcharges, it shall be held responsible for the refund; in turn, as appropriate, ITI could take steps to recoup these charges from ITT-Metromedia if it so chooses.

ITI's refund proposal (as corrected) amounts to $413,582. To this amount, we have added $72,985 associated with calls billed by out-of-state LECs and $192,626 associated with calls billed on behalf of ITT-Metromedia, yielding a total refund amount of $679,195.

Implementation

In its January, 1990, refund report, ITI put forth two alternatives to implement the refund. Its first proposal would be to make direct refunds or credits of all excess amounts of $1.00 or more billed from October 1, 1989, until the Company's conforming rates took effect. ITI's second proposal, which appears is its current position, would return the full amount over a six month period through a prospective rate reduction below AT&T's rates. Under either alternative, the Company agrees to file monthly

reports with the Commission showing the amounts refunded until the refund process has been completed.

Consistent with our finding in Order No. 20489, ITI's refund shall be accomplished through a prospective reduction to its rates. We have estimated that a $.25 reduction to ITI's Florida intrastate rates for operator charges would return the excess amount over approximately a nine month period. Accordingly, the Company shall begin the refund process immediately upon this Order becoming final. The Company shall file monthly reports with this Commission until the refund process is completed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that International Telecharge, Inc. shall refund $679,195.00 in accordance with the terms and conditions set forth herein. It is further

ORDERED that the effective date of our action described herein is the first working day following the date specified below, if no proper protest to this Proposed Agency Action is filed within the time frame set forth below. It is further

ORDERED that International Telecharge, Inc. shall file monthly reports in accordance with the directives contained herein. It is further

ORDERED that this docket shall remain open until such time as the refund process has been completed, after which the docket shall be closed administratively.

By ORDER of the Florida Public Service Commission, this 3rd day of JUNE, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ABG

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.

The action proposed herein is 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 and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on June 21, 1991.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.