



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC
00 MAY -4 AM 9:29
RECORDS AND REPORTING

DATE: MAY 4, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (M. WATTS) *MA*
DIVISION OF LEGAL SERVICES (BANKS/CALDWELL) *PPB*
Duc

RE: DOCKET NO. 000349-TI - INVESTIGATION AND DETERMINATION OF APPROPRIATE METHOD FOR REFUNDING INTEREST AND OVERCHARGES ON INTRASTATE 0+ CALLS MADE FROM PAY TELEPHONES AND IN A CALL AGGREGATOR CONTEXT BY ITC^DELTACOM COMMUNICATIONS, INC. D/B/A ITC^DELTACOM.

AGENDA: 05/16/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\000349.RCM

CASE BACKGROUND

- June 23, 1989 - ITC^Deltacom was granted IXC Certificate No. 2297.
- February 1, 1999 - Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements, was amended to cap rates on intrastate toll 0+ calls placed from pay telephones or a call aggregator context to \$.30 per minute plus \$3.25 for a person-to-person call or \$1.75 for a non person-to-person call.
- January 3, 2000 - Staff reviewed ITC^Deltacom's tariff for compliance with Rule 25-24.630, Florida Administrative Code, and found that ITC^Deltacom's tariffed rates appeared to exceed the rate cap. Staff mailed ITC^Deltacom a certified

DOCUMENT NUMBER-DATE

05543 MAY-48

FPSC-RECORDS/REPORTING

DOCKET NO. 000349-11

DATE: MAY 4, 2000

letter and requested additional information by January 31, 2000.

- January 10, 2000 - The United States Postal Service returned the receipt, which showed the certified letter was signed for and delivered on this date.
- January 21, 2000 - ITC^Deltacom's initial reply was received, with overcharges calculated for the period February 1, 1999, to December 31, 1999. The calculations for the period January 1, 2000, to January 18, 2000, were not complete at that time and would be forwarded under separate cover when received.
- February 24, 2000 - ITC^Deltacom's final reply received with the data for January 2000.

Staff believes the following recommendations are appropriate.

ISSUE 1: Should the Commission accept ITC^Deltacom's offer of refund and refund calculation of \$405.05, plus interest of \$24.32, for a total of \$429.37, for overcharging customers for 0+ intrastate toll calls placed from pay telephones and in call aggregator contexts between February 1, 1999, and January 18, 2000?

RECOMMENDATION: Yes. The Commission should accept ITC^Deltacom's calculation of \$405.05, adding interest of \$24.32, for a total of \$429.37, and proposal to credit customer bills beginning July 1, 2000, and ending July 31, 2000, for overcharging customers for 0+ intrastate toll calls placed from pay telephones and in call aggregator contexts between February 1, 1999, and January 18, 2000. The refunds should be made through credits to customers' bills beginning July 1, 2000. At the end of the refund period, any amount not refunded, including interest, should be remitted to the Commission and forwarded to the Comptroller for deposit in the General Revenue Fund, pursuant to Chapter 364.285(1), Florida Statutes. ITC^Deltacom should submit a final report as required by Rule 25-4.114, Florida Administrative Code, Refunds, by October 2, 2000. (M. Watts)

STAFF ANALYSIS: Staff compared ITC^Deltacom's tariff for operator service rates to the rate cap established in Rule 25-24.630, Florida Administrative Code. Based on the comparison, it appeared ITC^Deltacom was charging \$2.25 for some non person-to-person calls instead of \$1.75 and \$4.90 for person-to-person calls instead of \$3.25. In addition, it appeared that ITC^Deltacom was charging an operator-dialed surcharge of \$0.85 for a customer-dialed called number, and \$1.15 for an operator-dialed called number. Therefore, it appeared that the rates ITC^Deltacom was charging exceeded the rate cap. On January 3, 2000, staff wrote to ITC^Deltacom and advised it of the discrepancy and requested information by January 20, 2000. Upon receipt of staff's letter, an ITC^Deltacom representative contacted staff and advised that the oversight would be promptly corrected.

The company's tariff, which became effective March 5, 1999, included an operator-dialed surcharge in addition to the per minute rate and the person-to-person and non person-to-person surcharge. The company revised its tariff to remove the operator-dialed surcharge and lower the person-to-person and non person-to-person surcharges to comply with the rate caps and ceased billing customers at the higher rates on January 19, 2000. On February 24, 2000, ITC^Deltacom provided detailed information in response to staff's letter and stated that 345 customers were overcharged a total of \$405.05.

Based on the foregoing, staff recommends that the Commission accept ITC^Deltacom's calculation of \$405.05, adding interest of \$24.32, for a total of \$429.37, and proposal to credit customer bills beginning July 1, 2000, and ending July 31, 2000, for overcharging customers for 0+ intrastate toll calls placed from pay telephones and in call aggregator contexts between February 1, 1999, and January 18, 2000. The refunds should be made through credits to customers' bills beginning July 1, 2000. At the end of the refund period, any amount not refunded, including interest, should be remitted to the Commission and forwarded to the Comptroller for deposit in the General Revenue Fund, pursuant to Chapter 364.285(1), Florida Statutes. ITC^Deltacom should submit a final report as required by Rule 25-4.114, Florida Administrative Code, Refunds, by October 2, 2000.

ISSUE 2: Should ITC^Deltacom be required to show cause why it should not pay a fine for overbilling of calls in excess of the rate cap established in Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements?

RECOMMENDATION: No. Staff does not believe that ITC^Deltacom's conduct rises to the level that warrants an Order to Show Cause.
(M. Watts)

STAFF ANALYSIS: By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or Order of the Commission, or any provision of Chapter 364, Florida Statutes. Staff does not believe that ITC^Deltacom's conduct rises to the level that warrants an Order to Show Cause.

ITC^Deltacom corrected the problem and cooperated fully with staff during the investigation. Moreover, ITC^Deltacom has agreed to refund those overcharged customers, including interest.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If no person, whose interests are substantially affected by the proposed action, files a protest of the Commission's decision on Issue 1 within the 21-day protest period, the Commission's Order will become final upon issuance of a Consummating Order. This docket should, however, remain open pending the completion of the refund and receipt of the final report on the refund. After completion of the refund and receipt of the final refund report, this docket may be closed administratively. **(Banks/Caldwell)**

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a Proposed Agency Action Order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, the Commission's Order will become final upon issuance of a Consummating Order. This docket should, however, remain open pending the completion of the refund and receipt of the final report on the refund. After completion of the refund and receipt of the final report, this docket may be closed administratively.