

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the Requirements)	DOCKET NO. 871394-TP
Appropriate for Alternative Operator)	ORDER NO. 22185
Services and Public Telephones)	ISSUED: 11-15-89
)	

The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING MOTION FOR CLARIFICATION
OF ORDER NO. 21396

BY THE COMMISSION:

On December 21, 1988, we issued Order No. 20489 in the above-referenced docket, which set forth the provisions and requirements Alternative Operator Service (AOS) providers must comply with to provide intrastate operator services. Under the terms of the Order, all certificated AOS providers were required to file tariffs within thirty (30) days of the Order's issuance date, to become effective thirty (30) days thereafter. Several parties have filed Motions for Reconsideration of Order No. 20489 that we will address separately. Our decision in the instant Order is only intended to address the Motion for Clarification of Order No. 21396 filed in this docket on July 3, 1989, by International Telecharge, Inc. (ITI).

By Order No. 20489, we directed AOS providers to file tariffs reflecting rates which did not exceed the AT&T Communications, Inc. (ATT-C) time-of-day rates, with applicable operator charges. Additionally, by Order No. 20489, we prohibited AOS providers from billing and collecting any surcharge from an end user on behalf of the AOS provider's customer.

On March 10, 1989, ITI filed a Motion for Stay of Order No. 20489 Pending Reconsideration. Several other parties filed similar motions. Among other things, ITI requested a stay of our rate cap, although ITI did not request a stay of our prohibition against billing and collection of surcharges. By Order No. 21051, issued April 14, 1989, we granted a stay of our rate cap, conditioned upon the posting of good and

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sufficient bond, or the posting of a corporate undertaking, either of which would be subject to our approval, prior to the effective date of the new rates. No other stays were granted by Order No. 21051. Order No. 21051 did not discuss the prohibition against billing and collection of surcharges from the end user because neither ITI nor any other party requested a stay of that portion of Order No. 20489.

On April 25, 1989, ITI filed its Notice of Corporate Undertaking, pursuant to the requirements of Order No. 21051, so that ITI could continue to charge above the capped level, pending reconsideration of Order No. 20489. By Order No. 21396, issued June 16, 1989, we approved ITI's Notice of Corporate Undertaking.

On June 21, 1989, ITI was advised by letter that its tariff did not conform to Order No. 20489's prohibition against billing and collection of surcharges from end users. On July 3, 1989, ITI filed a Motion for Clarification of Order No. 21396, along with a Request for Oral Argument on the Motion. By Order No. 21817, issued September 5, 1989, the Prehearing Officer denied ITI's Request for Oral Argument.

ITI's present Motion asks us to clarify that, pursuant to Order No. 21396, ITI is entitled to bill and collect a surcharge from the end user on behalf of its customers. In order to understand the procedural posture of ITI's Motion, it is necessary to briefly review the events that have transpired thus far in this docket. Order No. 20489 was a final order. As stated in Rule 25-22.060(1)(c), Florida Administrative Code, a motion for reconsideration does not stay the effectiveness of a final order. Thus, unless we stay a particular provision of a final order, that provision has full force and effect, notwithstanding the fact that a motion for reconsideration has been filed. As applied to the facts here, that means that Order No. 20489's prohibition against billing and collection of surcharges by AOS providers has become effective, subject to the motions for reconsideration that are pending. On the other hand, Order No. 20489's rate cap has been stayed as to ITI, subject to the motions for reconsideration, and subject further to Order No. 21051's bond or undertaking requirements.

As can be seen from the above analysis, any motion directed toward the prohibition against billing and collection of surcharges would need to speak to Order No. 20489, the Order

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which imposed this requirement. ITI has already requested such reconsideration. To that extent, ITI's present Motion is duplicative. Further, because the time for requesting reconsideration of Order No. 20489 has long since expired, ITI's present Motion is untimely, as well.

Based upon the above considerations, we find it appropriate to deny ITI's Motion for Clarification of Order No. 21396. Irrespective of its title, we find that ITI's Motion amounts to no more than a request for reconsideration of Order No. 20489 and, as such, is both duplicative and untimely.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Clarification of Order No. 21396 filed by International Telecharge, Inc. on July 3, 1989, is hereby denied as set forth in the body of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission,
this 15th day of NOVEMBER, 1989.



STEVE TRIBBLE, Director
Division of Records and Reporting

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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.

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.