BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into UNITED TELEPHONE COMPANY OF FLORIDA authorized return on equity and earnings.	)	DOCKET NO. 891239-TL ORDER NO. 24595 ISSUED: 5/29/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
BETTY EASLEY
GERALD L. GUNTER

NOTICE OF PROPOSED AGENCY ACTION

ORDER ESTABLISHING IMPLEMENTATION PERIOD AND CLARIFYING $.25 MESSAGE RATE PLAN ESTABLISHED BY ORDER NO. 24049, AND FINAL ORDER DISPOSING OF MOTIONS FOR CLARIFICATION AND RECONSIDERATION OF AND RESOLVING PROTESTS TO ORDER NO. 24049

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed in Section IV of this Order establishing an implementation period and clarifying the $.25 message rate plan 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.

I. Background

Order No. 24049 issued January 31, 1991, granted United Telephone Company of Florida (United or the Company) a rate increase and issued a proposed agency action implementing a $.25 message rate for message toll service (MTS) in United's 0-10 mileage band. United filed motions for clarification and reconsideration on February 15, 1991. On February 25, 1991, the Office of Public Counsel (OPC) filed a response to United's motion for reconsideration.

Order No. 24049 also issued a proposed agency action implementing a $.25 message rate for MTS in United's 0-10 mileage band. United and Florida Pay Telephone Association (FPTA) protested Order No. 24049 stating that they needed more time to implement the $.25 plan and investigate the potential problems surrounding the implementation of that plan.

On March 7, 1991, OPC filed a motion to place $964,967 per year of United's revenues subject to refund due to United's

decision not to transfer operator services to Sprint Services. On March 19, 1991, United filed a motion to dismiss OPC's motion to place money subject to refund indicating that it would quantify the impact of the changes to its operator services and notify the Commission by April 25, 1991. We will not address OPC's motion to place revenues subject to refund in this Order.

II. Motion for Clarification

Order No. 24049 reflects our general approval of a stipulation that United will review and modify its tariff following the rate case. Under the terms of the stipulation the Company has 120 days to determine the feasibility and potential revenue impact of implementing a tariff similar to the tariff jointly developed by our Staff and Southern Bell Telephone and Telegraph Company (Southern Bell) in Docket No. 890099-TL. However, the Order inadvertently omitted the specific tariff section to be modified. United has requested that we clarify Order No. 24049 to identify the relevant tariff. We hereby clarify that the appropriate tariff to be modified is Section A5 of the Company's General Exchange Tariff, entitled "Charges Applicable Under Special Conditions."

United has also requested that we clarify what time of day discounts apply to the table of MTS rates which appears on page 60 of the Order. Since no changes were made to the existing time of day discounts, the existing discounts are applicable to the rates shown on page 60 of Order No. 24049.

III. Motion for Reconsideration

A. Separate Touchtone Charge for ABC Services

United's first request is that we reconsider our decision to impose a separate Touchtone charge of $1.00 per main station line on its ABC Services. The Company states that we failed to consider that the record contained no evidence on this matter. United also states it was not a party to Docket No. 881257-TL, the docket in which the issue of comparable pricing between PBX and Centrex services was analyzed. The Company states that it is not aware of official notice or recognition being taken of any evidence in Docket No. 881257-TL for purposes of this proceeding. And finally, United states that none of its ABC customers were given notice that their rates might be increased by $1.00 per line in this docket.

We disagree that there was insufficient evidence in this docket to impose separate Touchtone charges on ABC Service

customers. Furthermore, United's argument that no party made the specific proposal in the course of issue development and discovery is without merit. This Commission is not confined to a choice of parties' positions when pricing a service. One of the issues in the proceeding concerned Touchtone and United's proposal for banded rates.

Docket No. 881257-TL was an examination into the cost and pricing differences between Southern Bell offerings to PBX users and those to its own ESSX subscribers. In that docket, it became apparent that there was no cost differential in providing Touchtone to PBX versus ESSX users. However, only ESSX users received Touchtone at no charge. In this docket, we found the same situation. Therefore, we found it appropriate to impose a separate Touchtone charge to United's ABC Service. This charge makes the competitive offerings, PBX and ABC, priced more comparably, and second, it serves as an incentive for United to reduce and/or eliminate Touchtone charges in general. There was ample evidence in the exhibits containing Mr. Poag's deposition transcripts for this Commission to be comfortable with implementing this separate Touchtone charge.

Our decision in this docket was based on United's pricing policies. Our examination in Docket No. 881257 of PBX versus ESSX pricing was based on Southern Bell data. We took no action in that docket. Any pricing changes were to be addressed in Company-specific cases as done in this proceeding.

Finally, we do not find persuasive United's argument that ABC users were not notified that their rates may go up by $1.00 per line. All of United's customers, including ABC Service customers, were notified in June 1990 that United had requested rate changes and that their rates could change pending this Commission's decision in January 1991. Therefore, we find it appropriate to deny United's request that we reconsider our decision to impose Touchtone charges on United's ABC Service.

B. June 30, 1990 Earnings Surveillance Report as Proxy for 1990 Earnings

United has also stated that this Commission should reconsider the portion of Order No. 24049 in which it utilized United's June 30, 1990, earnings surveillance report (ESR) as a proxy for the Company's 1990 calendar year earnings. The basis for the Company's request for reconsideration on this issue is that it was without notice that the Commission would utilize its June 30, 1990, ESR for this purpose. In addition, the Company states that there is no evidence in the record that its June 30 ESR is an "...appropriate

surrogate for 1990." The Company's position is that we should permit it a full scale separate hearing in which to determine its 1990 earnings. This determination would then drive the determination of the appropriate refund, if any, of interim revenues.

Regarding its argument that it had no notice that its June 30, 1990 ESR might be utilized as a surrogate for its 1990 earnings, the Company states that the Staff failed to ask any questions regarding the June 30, 1990 ESR and did not in any other fashion indicate to the Company what the purpose was of submitting it into evidence. United also states that, therefore, it was denied an opportunity to be fully heard on this issue.

The Company starts with the presumption that its position should have been accepted by the Commission simply because no other party took a position on this issue and that we should have delayed ruling on this issue until the final earnings results from its interim period of 1990 would be available. There is no basis for such a presumption by United. There is no basis on which United can claim that it was not given a full opportunity to be heard on this issue. It was United's decision not to put into the record any evidence whatsoever as to how this Commission should dispose of its revenues subject to corporate undertaking.

Disregarding all the other rate cases in which this Commission has disposed of revenues placed subject to refund at the same time, it has issued its final order in the full rate proceedings with which such revenues were connected, this Company has been on notice that the Commission would have to address the disposition of these revenues as early as the date of Order No. 22377, issued January 8, 1990. Order No. 22377 placed these revenues subject to refund based on the Company's August 31, 1989 surveillance report. This action, in itself, put the Company on notice that this Commission utilizes the ESR to determine a company's earnings. In addition, Prehearing Order No. 23539, issued September 28, 1990, reflected as Issue 63 in this rate proceeding the following: "What is the amount and appropriate disposition of the revenue held subject to corporate undertaking?"

In addition, Prehearing Order No. 23539 listed, as a Staff exhibit for Witness McRae, United's June 30, 1990, ESR. The Company states that it took the position that the appropriate disposition of these revenues could not be determined until its 1990 earnings were "known" and that the Staff took no position pending further discovery. Apparently, United's view is that this Commission had only one choice, the one taken by United--which was to wait until 1990 was over and then look at the Company's

earnings. The Company failed to submit any evidence into the record on which the Commission could determine the appropriate disposition of its revenues held subject to corporate undertaking. It is a specious argument to say that the Company was not on notice that we would make a decision on this issue in this proceeding because our Staff did not take a specific position on this. It has always been this Commission's practice to make a decision regarding the appropriate disposition of revenues held subject to corporate undertaking during the rate proceeding with which they are connected. It has never been our practice to defer this issue until the final earnings results connected with the interim period are known.

In this proceeding, the June 30, 1990, ESR was the latest and, presumably therefore, the most accurate reflection this Commission had of United's earnings during the interim period. In other rate cases, this Commission has utilized information from periods prior to the interim period--information which would arguably be staler than that utilized here. United does not argue that this Commission should have used the historical data available in this proceeding that related to the 12 months prior to the interim period 1989, but that this Commission should give it the benefit of a second full hearing on interim earnings once its 1990 results were known.

This Commission is not required to provide a full hearing to determine the earnings of a utility during an interim period for the purpose of determining the appropriate refund. The primary limitation placed on this Commission's discretion in Section 364.055, Florida Statutes, regarding the determination of the appropriate refund, is that the maximum refund shall be the amount of revenues that has been placed subject to corporate undertaking. In United Telephone Company of Florida v. Mann, 403 So.2d 962, (Fla. 1981), in which the Florida Supreme Court decided that this Commission has the authority to order interim rate decreases, the Court stated, at 967:

> That does not mean that the amount to be refunded must necessarily be calculated by the previously authorized rate of return. To hold so would defeat the purpose of allowing the utility to collect excess revenues subject to refund. The commission is unable to determine at the time of the interim hearing the amount of the utility's revenues, if any, which are excessive. Such a determination can only be made after a comprehensive rate making proceeding has been held. A part of that

> determination is the rate of return which the utility should be authorized to earn during the pendency of the full rate making proceeding. Therefore the commission may base its refund order upon the newly established rate of return so long as the new rate is based upon data that existed before the commission issued its interim order.

Later, at 968, the Court also stated:

> We therefore hold that the commission has the discretion to determine the amount of revenues collected during the interim period which are excessive so long as that amount does not exceed the amount ordered subject to refund at the interim hearing.

The subsequent enactment of the "interim statute," Section 364.055, Florida Statutes, in 1982 delineated exactly how this Commission is to determine the amount of revenues to be refunded. This statutory section includes the limitation set forth above from the United 1981 case that the refund amount shall not exceed those revenues placed subject to refund. It is clear from the foregoing that this Commission has a great deal of discretion in determining the appropriate refund in a situation such as this. United had every opportunity to be heard on this issue in this proceeding. Its June 30, 1990 ESR is the only evidence in the record as to the Company's 1990 earnings for purposes of interim. Therefore, we find it appropriate to deny United's motion for reconsideration of the portion of our Order No. 24049 in which we utilized United's June 30, 1990 ESR as a surrogate for its 1990 earnings.

C. Disallowance of "One Phone Company" Advertising Costs

United has requested that we reconsider our decision to disallow the "One Phone Company" advertising campaign costs. We disallowed the costs because we found that the main point of the campaign was the sale or lease of business telephone equipment relying on the image of the local telephone company to support the equipment. This Commission also found that the "One Phone Company" campaign is image building and tends to support the nonregulated operations of the Company with the image of the regulated Company.

Even if we decided to allow a part of the "One Phone Company" advertising campaign as promotional advertising, United did not adequately support the amount in its MFRs. To the contrary, OPC

cross-examined Witness McRae about several ads which were entirely or predominantly nonregulated in nature, but were charged to regulated operations. Witness McRae testified that part of the costs of these ads may have been subsequently allocated to nonregulated operations. However, no definite answer was received. We believe that there are significant problems in the allocation of costs between the regulated and nonregulated operations for the "One Phone Company" advertising campaign.

United is presenting the same evidence and arguments which it initially presented at the hearing and which we considered before we issued Order No. 24049. We find it appropriate to deny United's motion for reconsideration of the disallowance of the "One Phone Company" advertising campaign.

D. Removal of United's Investment in UTLD Solely From Common Equity

United has also requested that we reconsider our decision to remove United's investment in UTLD solely from common equity. United argues that, given our disallowance of image advertising from regulated cost of service and its requirement of a compensation payment to United, we should reconsider our decision to remove the investment in UTLD solely from common equity so that some of the burden of UTLD can be shifted to the ratepayers of United.

In this proceeding, United requested that we treat image advertising above the line. We rejected this request in Order No. 24049. Since United was given a fair opportunity to be heard, the Company consequently does not ask for reconsideration of the disallowance of image advertising. United argues that this Commission is inconsistent in requiring UTLD to pay United a "royalty," removing United's investment in UTLD entirely from the equity portion of United's capital structure, and disallowing institutional advertising which, in United's opinion, creates the image and reputation that the "royalty" is designed to recognize.

United points out that rate proceedings are necessarily complex and that many interrelationships exist that must be reconciled with each other. It is United's opinion that the reconciliation of United's relationship with UTLD was overlooked by this Commission. United argues that its stockholders should not be required to bear all the investment risk in UTLD, when it is required to share the rewards with United's ratepayers. Also, the Company states that its stockholders should not be required to bear all the costs of image advertising while being required to share the fruits of that advertising with the ratepayer. The Company

asserts that it is contradictory for this Commission to authorize United to fund UTLD through debt and equity advances if it is unwilling to recognize these decisions for ratemaking purposes.

Although the Company's arguments imply that our decisions regarding United's relationship with UTLD are inconsistent, the facts of the case clearly show that our decisions are consistent with each other and with the record in this case. Furthermore, United did not offer any additional insight into these issues nor did it point out any facts from the record that were not already considered by this Commission when these decisions were originally made.

By Order No. 18939, issued March 2, 1988, we granted UTLD a certificate to operate as a long distance carrier, allowed UTLD to be structured as a subsidiary of United, and authorized United to finance UTLD with both debt and equity capital. United asserts that, because of this Order, its investment in UTLD should be removed pro rata from all sources of investor-supplied capital, including both short and long-term debt, preferred stock, and common equity. However, as OPC Witness DeWard pointed out, Commission practice has been to remove non-regulated investments from the capital structure solely from common equity unless the Company can show that to do otherwise would result in a more equitable determination of the cost of capital for regulatory purposes. This is because the cost of capital allowed for ratemaking purposes should be the cost of capital associated with the provision of utility service. By removing non-regulated investments solely from equity, this Commission recognizes their higher risks, prevents cost of capital cross-subsidies, and assures that ratepayers will not subsidize non-utility related costs.

Both cost of equity witnesses, Witness Linke testifying on behalf of United and Witness Rothschild testifying on behalf of the OPC, agree that the cost of capital is the minimum rate of return necessary to attract capital to an investment. They also agree that the cost of capital is a function of the risk of the investment and that the greater the risk, the greater the return investors require. Witness McRae, testifying on behalf of United, admitted during the hearing that UTLD, as a competitive long distance carrier, is subject to more business risk than United, a monopoly local exchange company. As a result, the cost of capital to United will almost certainly increase to the extent that the risk associated with the non-regulated investment is greater.

United did not offer any evidence to show that the pro rata removal of its investment in UTLD from the capital structure would result in a more equitable determination of the cost of capital for

regulatory purposes. However, there is competent substantial evidence that United's investment in UTLD does increase the risk and the resulting cost of capital of United. Therefore, we find our decision in Order No. 24049 to remove United's investment in UTLD from its capital structure solely from common equity to be appropriate, and we hereby reject United's motion for reconsideration on this point.

E. Appropriate Ratemaking Treatment for Charges for Unlisted and Nonpublished Telephone Numbers

United has also requested reconsideration on the issue regarding the appropriate accounting for unlisted and nonpublished telephone numbers. First, United argues that Part 32, the Uniform System of Accounts (USOA) requires that charges for unlisted and nonpublished telephone numbers be recorded in Account 5230. Second, United contends that Rule 25-4.0405(2)(f), Florida Administrative Code, requires that all revenue recorded in Account 5230 be treated as directory advertising revenue for purposes of Rule 25-4.0405. United believes that we overlooked or failed to consider its second point.

In accounting for revenues for unlisted and nonpublished telephone numbers this Commission has never required any accounting other than that prescribed by Part 32. Therefore, we agree with United's first point.

United's second point is that Rule 25-4.0405(2)(f) requires all revenue in Account 5230 to be treated as directory advertising revenue. Implicit in this second point is the notion that the accounting treatment required by Part 32 will drive the ratemaking treatment of these revenues. However, Rule 25-4.0405(1) states:

> The provision of this rule, in conjunction with the provisions of Section 364.037, Florida Statutes (1983), shall govern the ratemaking treatment for telephone directory advertising revenues and expenses.

It is clear that the Florida Statutes and the Commission rule will govern the ratemaking treatment. Part 32 will not govern the ratemaking treatment. The ratemaking treatment for revenues and expenses does not always follow the accounting treatment, nor should it necessarily. A well known example is the universal service fund revenue which is recorded on the books as interstate revenue, yet treated as intrastate revenue for ratemaking purposes.

United's position regarding the ratemaking treatment of charges for unlisted and nonpublished telephone numbers relies on only a portion of Rule 25-4.0405(2)(f). The Company has ignored some additional parts of the rule. Paragraph (g) of the rule defines directory advertising revenues and directory advertising expenses. Revenues from unlisted and nonpublished telephone numbers are not included in directory advertising revenues, as used in this Rule. This Rule's definition of directory advertising revenues and expenses has not changed since it was originally implemented in 1986. Section 364.037, Florida Statutes, regarding telephone directory advertising revenues, has not changed. The fact that the USOA has changed the accounting for revenue from unlisted and nonpublished telephone numbers is not relevant. The ratemaking treatment required by the statute and the rule has not changed. Therefore, we find it appropriate to deny United's motion for reconsideration of the ratemaking treatment of charges for unlisted and nonpublished telephone numbers.

IV. Resolution of United and FPTA's Protests of the PAA Portion of Order No. 24049

On February 21, 1991, United and FPTA each filed petitions protesting the proposed agency action (PAA) contained in our Order No. 24049. The PAA portion of Order No. 24049 required the Company to assess a flat $.25 per call for calls currently in the MTS 0-10 mileage band. Neither party opposes the $.25 message rate plan. Their petitions merely pertain to questions with respect to the implementation of the plan, including the absence of a provision affording the Company sufficient time to implement the new $.25 message rate plan and uncertainties regarding the proper treatment of plan calls originating from paystations.

With respect to its first concern, United indicates that the Order appears to require the implementation of the message rate plan by the time the PAA becomes final. The Company asserts that it is unable to meet this condition, noting in its petition that it "... must devise a method of recording such calls which will ensure proper rating, change the rating of calls in its billing system, change its treatment of such calls from privately owned pay telephones from toll to local and test the changes for accuracy and reliability." United requests that we allow a 90 day implementation period from the date the PAA becomes final in order to complete this process.

FPTA expresses concerns regarding the extent to which technical limitations in its members' payphone equipment may require software and/or hardware modifications in order to treat

the message rate plan calls as local. Stating that they too have no fundamental objections to the proposed $.25 message rate plan, FPTA notes only that further investigation is needed to ascertain whether or not insurmountable problems will arise for PATS providers when implementing the message rate plan.

We recognize that implementation of the $.25 message rate plan will require significant efforts on the part of the Company. Moreover, presently unforeseen obstacles may be encountered during the conversion. Accordingly, we find that the 90-day implementation period requested by the Company is reasonable and hereby approve it.

According to the Company's Petition, five of the nine 0-10 mile toll routes subject to the $.25 message rate plan are served at least in part by analog switches; the measuring limitations of these switches preclude implementing the message rate plan along these routes using seven digit dialing. While United thus can provide seven digit dialing along some of these routes, to avoid the customer confusion that might result from having two different dialing patterns, United intends to retain 1+ dialing for all nine routes.

The intent of the message rate plan is to treat such calls as local. The plan shall be deployed using seven digit dialing. Although this option currently is unavailable along five of the 0-10 mile routes due to their analog switches, all of these analog central offices are scheduled for digital switch replacements within the next two years.

For the present, the message rate plan shall be implemented using 1+ dialing for those routes which currently have analog switches. However, when each office is upgraded to digital, the message rate plan shall be provided using seven digit dialing. The benefit of seven digit dialing for those routes where it can be offered offsets any short-term confusion that may result from having two dialing patterns. Therefore, the plan shall be implemented now using seven digit dialing on those routes where the capability exists.

Currently, when a 1+ call is dialed from a paystation, the customer is assessed the applicable MTS rates plus an operator charge. United also seeks clarification as to whether we intended that operator charges be assessed on payphone traffic subject to the $.25 message rate plan. We hereby clarify that our intent was to assess the end user only $.25 each for such calls, whether provided from a LEC or a nonLEC paystation.

By ORDER of the Florida Public Service Commission, this 29th day of MAY, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

by: Kay Flynn
Chief, Bureau of Records

SFS

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 action in Section IV establishing an implementation period and clarifying the $.25 message rate plan 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 18, 1991. In the absence of such a petition, this order shall become effective on the date 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 the relevant portion of 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.