

State of Florida



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-

COMMISSION
CLERK

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RECEIVED-FPSC

DATE: OCTOBER 22, 2003

TO: DIRECTOR, DIVISION - OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYO)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (BUYS, DBB, ALM, JDT, MC)
LEWIS, HOWELL) CKL EX
OFFICE OF THE GENERAL COUNSEL (SUSAC)
DIVISION OF ECONOMIC REGULATION (MAUREY) DM

RE: DOCKET NO. 030872-TI - INVESTIGATION AND DETERMINATION OF
APPROPRIATE METHOD FOR REFUNDING OVERCHARGES ASSESSED ON
INTRASTATE CALLS MADE USING ONE PLUS AND CALLING CARD
SERVICES PROVIDED BY FLORIDA DIGITAL NETWORK, INC. D/B/A
FDN COMMUNICATIONS.

AGENDA: 11/03/03 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\030872.RCM

CASE BACKGROUND

- July 6, 1999 - Florida Digital Network, Inc. d/b/a FDN Communications (FDN) obtained Certificate No. 7048 authorizing the company to provide interexchange telecommunications services in Florida.
- March 11, 2002, through April 11, 2002 - Staff evaluated the quality of service from access lines presubscribed to FDN during a telephone service evaluation in the Miami exchange.
- September 9, 2002, through October 4, 2002 - Staff evaluated the quality of service from access lines

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presubscribed to FDN during a telephone service evaluation in the Lakeland exchange.

- January 14, 2003 - FDN submitted its response to the service evaluations in the Miami and Lakeland exchanges.
- January 31, 2003 - Staff sent FDN a letter (Attachment A) requesting specific information regarding the overcharges and FDN's response.
- February 24, 2003 - FDN submitted its response (Attachment B) to the questions in staff's January 31, 2003, letter.
- April 28, 2003 - Staff evaluated the quality of service from access lines presubscribed to FDN to verify the corrective actions FDN put in place to correct the problems discovered during the previous service evaluations listed above.
- August 29, 2003 - Staff opened this docket to determine the appropriate method for refunding overcharges FDN assessed on intrastate calls made using one plus dialing and calling card services.
- September 26, 2003 - FDN submitted its proposal to refund the overcharges (Attachment C).
- October 21, 2003 - After receiving FDN's proposed method to refund the overcharges, staff used the proposed payment amount to calculate the interest to be paid by the company. FDN was notified of its requirement to pay interest and agreed to do so.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.04, 364.285, and 364.604, Florida Statutes, therefore, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept Florida Digital Network, Inc.'s proposal to refund and refund calculation of \$14,872.42, plus interest of \$404.92, totaling \$15,277.34, for overcharges on intrastate calls made using one plus service and calling card service from May 1, 2001, through February 28, 2003?

RECOMMENDATION: Yes. The Commission should accept Florida Digital Network Inc.'s proposal to refund and refund calculation of \$14,872.42, plus interest of \$404.92, totaling \$15,277.34, for overcharges on intrastate calls made using one plus service and calling card service from May 1, 2001, through February 28, 2003. All refunds should be completed within sixty (60) days of the issuance date of the Consummating order. Any un-refunded amounts and a final report should be remitted to the Commission within 180 days of the issuance date of the Consummating Order. If FDN fails to comply with its refund proposal, the company's tariff should be cancelled and registration number TJ246 should be removed from the register. If FDN's tariff is cancelled and registration number TJ246 is removed from the register, FDN should be required to immediately cease and desist providing intrastate interexchange telecommunications services in Florida. (Buys, Susac)

STAFF ANALYSIS:

APPARENT DEFICIENCY

Staff routinely conducts telephone service evaluations to determine if companies are timing calls and billing customers in accordance with tariffed rates. During two quality of service evaluations on access lines presubscribed to FDN, staff determined that FDN was overcharging customers for one plus calls and calling card calls. Staff requested that FDN investigate the overcharges, determine the magnitude, and propose to refund the affected customers.

According to FDN, an inaccuracy in the calculation of call duration in its billing system resulted in the following overcharges:

- Each affected call made using one plus dialing was overcharged by 0.10 minute. The per minute rate for intrastate long distance was \$.06, therefore, each

affected one plus call was overcharged by \$.006. A total of 2,236,470 one plus calls were affected which effectuated overcharges in the amount of \$13,418.82. Of this amount, \$10,205.52 pertains to open accounts and \$3,213.29 pertains to closed accounts.

- Each affected call made using the calling card services was overcharged by \$.06. A total of 24,227 calling card calls were affected which effectuated overcharges in the amount of \$1,453.60. Of this amount, \$730.30 pertains to open accounts and \$723.30 pertains to closed accounts.
- The billing error first occurred on May 1, 2001, and was corrected on January 27, 2003. The customer bills should no longer reflect the billing system error as of March 1, 2003.

As stated above, FDN acknowledges and admits to overcharging some of their customers due to an error in their billing system. Section 364.04, Florida Statutes, Schedules of Rates, Tolls, Rentals, Contracts, and Charges; Filing; Public Inspection; states, in pertinent part:

Companies shall charge only the rates contained in their tariff

Section 364.285(2), Florida Statutes, Penalties; states in pertinent part that

The Commission may, at its discretion, . . . compel the accounting and refund of any moneys collected in violation of this chapter or commission rule.

Inherent in the Commission's authority to refund moneys is the ability to calculate the refund with interest. FDN has therefore agreed to refund all charges in excess of the rates contained in its tariff back to the affected customers with interest.

PROPOSED REFUND

To resolve this matter, FDN proposes to refund the overcharges in the following method:

- Within sixty (60) days after the issuance date of the Consummating Order, refund any overcharges through credits to affected open accounts and closed accounts with a remaining balance.
- Refund overcharges amounting to \$1.00 or more on any closed accounts by company check mailed to the customer's last known address. Checks not cashed within 60 days after issuance would be considered unclaimed and the amounts would be contributed in one lump sum to the State General Revenue Fund.
- Any overcharges due on closed accounts which do not exceed \$0.99 will be contributed to the State General Revenue Fund. The cost of issuing checks for refunds under \$1.00 exceeds the amount of the refund due to the customer.
- File a final report with the Commission within 180 days of the issue date of the Consummating Order affirming account information, amounts credited, checks issued, and amounts unclaimed and paid to the State General Revenue Fund.

Based on the aforementioned, staff recommends that the Commission accept FDN's proposal to refund and refund calculation of \$14,872.42, plus interest of \$404.92, totaling \$15,277.34, for overcharges on intrastate calls made using one plus service and calling card service from May 1, 2001, through February 28, 2003. FDN's refund proposal is consistent with similar refund proposals accepted by the Commission in previous dockets.

DOCKET NO. 030872-TI
DATE: October 22, 2003

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If no person, whose interests are substantially affected by the proposed action files a protest of the Commission's decision in Issue 1 within the 21 day protest period, the Commission's Order will become final upon issuance of the 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 should be closed administratively. (Susac)

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 the 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 should be closed administratively.

DOCKET NO. 030872-TI
DATE: October 22, 2003

STATE OF FLORIDA

2 Attachment A

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



DIVISION OF COMPETITIVE MARKETS &
ENFORCEMENT
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

January 31, 2003

Via U.S. Mail and Facsimile:
(407) 835-0309

Mr. Matthew Feil
Florida Digital Network, Inc.
390 North Orange Avenue, Suite 2000
Orlando, FL 32801-1640

Re: Inquiry into the overcharges billed on intrastate 1+ calls and the proposed method of refund.

Dear Mr. Feil:

Our last two service evaluations revealed that Florida Digital Network, Inc. (FDN) apparently overcharged its customers for intrastate 1+ direct dialed calls, and intrastate calls made using FDN's travel (calling) card. Your email, dated January 14, 2003, sent to Clayton Lewis (copy enclosed) states that an inaccuracy in the calculation of call duration in the billing system caused the overcharges. However, your email does not provide us with a satisfactory explanation of the extent of the overcharges. Our analysis of the test calls made during the service evaluation indicates that FDN over billed approximately 10% of the calls made by 1+ direct dialing and over billed 52.2% of the calls made using FDN's calling card. To help us better understand the magnitude of this problem, please answer the following questions:

1. On what date did the overcharges first occur? If the date for the 1+ direct dialed calls is different from the calling card calls, please list both dates.
2. How many intrastate 1+ direct dialed calls were affected?
3. How many customers were overcharged for intrastate 1+ direct dialed calls?
4. What is the total amount of overcharges for intrastate 1+ direct dialed calls billed to FDN's customers?
5. How many intrastate calling card calls were affected?

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Mr. Matthew Feil
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January 31, 2003

6. How many customers were overcharged for intrastate calls made using FDN's calling card?
7. What is the total amount of overcharges billed to customers for intrastate calls made using FDN's calling card?
8. On what date will the billing problem be corrected?
9. On what date will the overcharges cease from appearing on customers' bills?

Once your company has determined the extent and the total amount of the overcharges, you should submit a proposed method to refund the overcharges back to the customers pursuant to Rule 25-4.114, Florida Administrative Code, Refunds. I have enclosed a copy of the rule for your convenience.

Please provide me with your company's refund proposal and a written reply answering the questions listed above no later than **February 21, 2003**. In addition, according to your correspondence to Elton Howell, your company's revised tariff (correcting the call timing increment for calling card calls) should be filed by February 14, 2003. Should you have any questions or wish to discuss this matter, please call me at (850) 413-6536.

Sincerely,



Dale R. Buys
Regulatory Analyst
Bureau of Service Quality

DRB
Enclosures (2)

From the Desk of

Clayton Lewis

Original Message-----

From: Matthew Feil [mailto:mfeil@floridadigital.net]
Sent: Tuesday, January 14, 2003 2:54 PM
To: Clayton Lewis; ehowell@psc.state.fl.us
Subject: Test Call Follow Up Issues

Gentlemen,

Here's the follow-up information you asked me for. I hope it's what you need to finish up your evaluations.

As I indicated previously, our switching records are accurate, our billing system requires adjustment. We discovered an inaccuracy in the calculation of call duration in the billing system. We have opened a project with our software supplier to make a programming change and expect the change to be in production in less than 30 days. We have verified that 1+ calls and travel card calls have been impacted by the same glitch.

We estimate that we have slightly over stated durations for 1 + calls with an impact of approximately \$3,500 for a relatively high usage month like November 2002. This represents roughly 3/10 of one percent of all 1+ billings for that month. Elton, with respect to the travel card calls, I'm told that FDN does not have much travel card call usage. In November for example, we had only 4,771 travel card calls, so we expect the revenue impact of the bug there to be minor dollars.

Further, the glitch that caused the slight over billings might have also triggered some under billings, but at present, we have not completely analyzed the impact of those specific under billed cases.

In conclusion, we think that the dollar amounts involved in any 1+ and travel card call erroneous billings are de minimus, and since FDN is committed to curing the biller's call duration issue within 30 days, we hope that the Commission staff is satisfied. If you request, we can provide you with some sort of verification once the software changes are complete.

Also, Elton, pursuant to your request/suggestion, we can commit to correcting the call increment reference for travel card calls in the tariff in less than 30 days.

If you need any more information, please let me know.



February 24, 2003

Mr. Dale R. Buys
Regulatory Analyst
Bureau of Service Quality
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

by email & U.S. mail

Re: FPSC Inquiry into overcharges on 1 + calls and calling card calls -- Quality of Service Evaluation/Miami Exchange

Dear Mr. Buys:

Thank you for taking the time to meet with me Thursday last week and provide you verbal answers to the questions posed in your January 31 letter. I appreciate your permitting me until today to respond in writing. Below, I answer your enumerated questions in the order in which you posed them.

1. The software issue commenced for 1 + and calling card calls on May 1, 2001.
2. FDN estimates 2,236,470 1 + calls were affected.
3. Some customers have multiple accounts. Approximately 35,490 accounts were affected. Of those, 24,751 are still open and 11,165 are closed.
4. The total principal at issue is \$13,418.82, and of this \$10,542.35 pertains to open accounts and \$2,876.47 pertains to closed accounts.
5. FDN estimates 24,227 calling card calls were affected.
6. Approximately 516 calling cards/accounts were affected. Of these, 410 are open accounts and 106 are closed.
7. The total principal at issue is \$363.40, and of this \$200.63 pertains to open accounts and \$162.77 pertains to closed accounts.
8. The billing system error was corrected on January 27, 2003.
9. The customer bills should no longer reflect the billing system error as of March 1, 2003's bills.

From what you told me last week, FDN is to provide the Commission staff with the principal amounts and account information and the staff will calculate the applicable interest. Please advise me what information you need for this task.

Since the dollar amounts involved are not substantial, FDN proposes to structure the applicable refunds such that the credits are posted all in one cycle to affected open accounts and closed accounts with a balance. Credits due to any other closed accounts FDN would propose to pay in a lump sum to the Outreach Program sponsored by the Department of Community Affairs, as you indicated would be possible in the email you sent me on Friday. FDN would prefer to provide the staff with just one refund report once all the credit posting is achieved.

Please advise me if the foregoing is acceptable. My understanding is that the tariff revision mentioned in your letter has already been filed and accepted.

If you have any questions, please contact me at 407-835-0460.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Feil", with a large, stylized flourish at the end.

Matthew Feil
General Counsel
Florida Digital Network



September 25, 2003

Ms. Blanca Bayó, Director
Division of the Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

via Overnight Mail

Re: FPSC Docket No. 030872-TI -- Investigation and determination of appropriate method for refunding overcharges assessed on intrastate calls made using one plus and calling card services provided by Florida Digital Network, Inc. d/b/a FDN Communications

Dear Ms. Bayó:

I write on behalf of Florida Digital Network, Inc. d/b/a FDN Communications ("FDN") in fulfillment of instructions of the Commission staff to detail FDN's proposal for refund in the captioned docket.

This matter began last year, when after conducting routine testing, the Commission staff discovered that the call duration of certain test calls were not reported on test bills within Commission parameters. After an investigation, FDN confirmed that its biller had a software glitch which caused minor errors in accessing call duration. After FDN corrected the glitch, staff retested the FDN services and verified that the error was cured. Hence, FDN agreed with the Commission staff to refund in accordance with the information and provisions below.

The enumerated information below is updated and corresponds to the enumerated questions staff asked FDN by letter dated January 31 and which FDN responded to by letter dated February 24.

1. The software glitch commenced for 1 + and calling card calls on May 1, 2001.
2. FDN estimates 2,236,470 1 + calls were affected.
3. Some customers have multiple accounts, but approximately 35,916 1 + accounts were affected. Of those, 21,897 are still open and 14,019 are closed.

LOCAL

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4. The total principal at issue is \$13,418.82, and of this \$10,205.52 pertains to open accounts and \$3,213.29 pertains to closed accounts.
5. FDN estimates 24,227 calling card calls were affected.
6. Approximately 516 calling cards/accounts were affected. Of these, 375 are open accounts and 141 are closed.
7. The total principal at issue is \$1,453.60, and of this \$730.30 pertains to open accounts and \$723.30 pertains to closed accounts.
8. The billing system error was corrected on January 27, 2003.
9. The customer bills should no longer reflect the billing system error as of March 1, 2003's bills.

Since the dollar amounts involved are not substantial, FDN proposes to structure the applicable refunds such that credits are posted all in one cycle to affected open accounts and closed accounts with a balance. FDN proposes to do this within sixty (60) days after a Commission Order accepting this proposal becomes final. For sums due any closed accounts (beyond any balance on the closed account) which do not exceed \$.99 FDN would propose to not issue refund checks since the cost of issuing and administering such checks exceed the amount to refund to the former customer. FDN would propose to pay the total of such amounts in a lump sum to the General Revenue Fund. For sums due any closed accounts (beyond any balance on the closed account) for \$1.00 and above, FDN would propose to pay such via check to the customer's last known address. The Commission would deem checks not cashed sixty (60) days after issuance as unclaimed property and paid as such in a lump sum to the General Revenue Fund.

FDN will file just one refund report with the Commission or staff. That will be a final refund report due 180 days after a final Commission order as aforesaid. The report will affirm account information, amounts credited, checks issued, and amounts unclaimed and paid to the General Revenue Fund.

An original and seven (7) copies of this letter are enclosed for filing in the above-captioned docket. If you have any questions, please contact me at 407-835-0460.

Sincerely,



Matthew Feil
General Counsel
FDN Communications