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Public Service Commission

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COMMISSION
CLERK

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

DATE: September 22, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (M. Watts) *MW*
Division of Economic Regulation (Lester) *PL*
Office of the General Counsel (Scott) *KS* *ALM*
BIC

RE: Docket No. 050485-TI – Investigation and determination of appropriate method for refunding unauthorized surcharges by Working Assets Funding Service, Inc. d/b/a Working Assets Long Distance.

AGENDA: 10/4/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\050485.RCM.DOC

Case Background

From February 14, 2005, through March 18, 2005, the Florida Public Service Commission (Commission) staff evaluated the timing and billing accuracy of test calls placed from an access line presubscribed to Working Assets Funding Service, Inc. d/b/a Working Assets Long Distance (WALD). Staff calculated the amount that should be charged for each call based on the length of the call and WALD's tariffed rates. When staff compared its calculations with the bill from WALD, it identified some possible billing and overcharge problems.

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Staff sent WALD a letter on April 20, 2005, to inform WALD of its evaluation findings and to request that WALD take action to identify and correct the billing errors. In its investigation, WALD discovered that the apparent errors were caused by a \$.99 per call surcharge on calls made by customers using the company's calling card. Upon further investigation, WALD found that Section 4.17.2 of its tariff did not contain the calling card surcharge of \$0.99 per call. WALD stated in its May 19, 2005, response that, while this charge was disclosed to its customers, the company failed to incorporate it in its tariff on file with the Commission. It has since updated its tariff to reflect this surcharge.

On June 7, 2005, staff sent WALD a letter requesting it submit a refund proposal. WALD submitted its refund proposal on September 7, 2005.

The Commission has jurisdiction over this matter pursuant to Sections 364.04 and 364.604, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission accept Working Assets Funding Service, Inc. d/b/a Working Assets Long Distance's proposal to issue a refund of \$14,960.88, plus interest of \$1,494.73, for a total of \$16,455.61, to the affected customers within 90 days of the issuance of the Consummating Order for overcharging end-users through imposing unauthorized surcharges from June 6, 1999, through May 19, 2005; require the company to distribute monies that cannot be identified with a specific customer equally to all active customers within 120 days of the issuance of the Consummating Order; and require the company to submit a report within 120 days of the issuance of the Consummating Order to the Commission stating, (1) how much was refunded to its customers, (2) the number of customers, and (3) the amount of money that was distributed equally to all active customers?

Recommendation: Yes. (M. Watts/Lester/Scott)

Staff Analysis: Rule 25-24.485(1)(g), Florida Administrative Code, states that a company shall charge only the rates contained in its tariff. As noted in the Case Background, WALD found that it had been charging its customers a surcharge that was not contained in its tariff. WALD determined that it instituted the surcharge on June 6, 1999, and continued billing the surcharge in error until May 19, 2005, when it filed its corrected tariff page. WALD reported that approximately 2,732¹ customers were overcharged a total amount of \$14,960.88, with an average refund of \$5.48 per customer. Staff calculated the interest on these overcharges to be \$1,494.73. WALD proposes to issue a credit to its active customers within 90 days of the Commission's approval. WALD stated that, of the 2,732 customers it identified, 1,148 customers were no longer with the company and would have to be issued a refund by check. WALD stated that it would cost the company \$7.52 per check to issue refunds to these disconnected customers, and even more cost if any of those customers proved unable to be located. WALD believes that issuing such small refunds to disconnected customers is impractical and cost-prohibitive, and has proposed distributing the portion of the refund due to disconnected customers, with interest, equally to all customers whose accounts are active as of the date of the refund.

Staff believes that WALD's rationale for estimating the amount overcharged is appropriate and supports WALD's plan to distribute monies that cannot be associated with a specific customer across the entire active customer base. Accordingly, staff recommends that the Commission accept Working Assets Funding Service, Inc. d/b/a Working Assets Long Distance's proposal to issue a refund of \$14,960.88, plus interest of \$1,494.73, for a total of \$16,455.61, to the affected customers within 90 days of the issuance of the Consummating Order for overcharging end-users through imposing unauthorized surcharges from June 6, 1999, through May 19, 2005; require the company to distribute monies that cannot be identified with a specific customer equally to all active customers within 120 days of the issuance of the Consummating Order; and require the company to submit a report within 120 days of the issuance of the Consummating Order to the Commission stating, (1) how much was refunded to

¹ WALD stated that data from June 1999 to May 2000 was archived in an unrecognizable file format and the data was irretrievable. The data for this time period was estimated using data from June to December 2000. WALD cannot identify with certainty individual customers from this time period.

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its customers, (2) the number of customers, and (3) the amount of money that was distributed equally to all active customers.

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Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order. The company should submit its final report to the Commission within 120 days of the issuance of the Consummating Order. Upon receipt of the final report, this docket should be closed administratively if no timely protest has been filed. **(Scott)**

Staff Analysis: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order if no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order. The company should submit its final report to the Commission within 120 days of the issuance of the Consummating Order. Upon receipt of the final report, this docket should be closed administratively if no timely protest has been filed.