BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the Require- ments Appropriate for Alterna- tive Operator Services and Public Telephones.	DOCKET NO. 871394-TP ORDER NO. PSC-92-0635-FOF-TP ISSUED: 07/09/92

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING EXTENSION OF TIME TO FILE REPORTS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein 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.

BACKGROUND

By Order No. 19095, issued April 4, 1988, we directed all alternative operator services (AOS) providers to hold subject to refund all revenues collected in excess of the most comparable local exchange company (LEC) rate, effective February 2, 1988.

On May 4, 1988, Central Corporation (Central) challenged the imposition of the refund, arguing that it constituted an invalidly promulgated rule. In a proceeding before the Florida Division of Administrative Hearings (DOAH), the Hearing Officer ruled on June 24, 1988, that the refund provision was indeed a rule and, therefore, invalid for failure to follow the rulemaking provisions of Chapter 120, Florida Statutes. Our position, however, was that the refund requirement was imposed pursuant to our authority to implement interim rates. Subsequently, we appealed the DOAH ruling to the First District Court of Appeal (First DCA).

On December 21, 1988, we issued Order No. 20489, our final order following the hearing in this docket. At that time, our appeal to the First DCA was still pending. In Order No. 20489, we set rate caps for AOS providers and we upheld our refund requirement, based upon the evidence we received during the

hearing. Accordingly, we directed that the refund be implemented through a prospective rate reduction, with further details pending a ruling from the First DCA. The excess revenues subject to refund were to be those collected from February 2, 1988, as determined in Order No. 19095, through November 17, 1988, the date of our Special Agenda following the hearing.

International Telecharge, Inc. (ITI or the Company), as well as a number of other parties, filed motions for reconsideration of Order No. 20489. In addition, ITI requested a stay of the AOS rate cap, pending disposition of the motions for reconsideration. By Order No. 21051, issued April 14, 1989, we granted a stay of our rate cap, but conditioned the stay upon the posting of a bond or corporate undertaking. ITI filed a Notice of Corporate Undertaking on April 25, 1989, so that it would be able to continue charging rates above the capped level during the pendency of reconsideration. By Order No. 21396, we approved ITI's request, subject to the Notice of Corporate Undertaking. No other parties requested permission to continue charging at their old rate levels pending reconsideration.

On October 19, 1989, the First DCA filed its opinion in our appeal of the DOAH ruling. In a sharply divided 2-1 decision, the First DCA affirmed the order of the DOAH Hearing Officer.

At our November 7, 1989, Agenda Conference, we considered the numerous motions for reconsideration that had been filed in response to Order No. 20489. At the time of that Agenda Conference, we had not yet reached a decision on whether we should pursue additional avenues of judicial review following the adverse decision of the First DCA. Accordingly, in Order No. 22243, issued November 29, 1989, following this Agenda Conference, we deferred any further rulings relative to the refund issue. Additionally, by Order No. 22243, we affirmed the AOS rate cap and required ITI to file a conforming tariff. Moreover, we directed ITI to compute the difference between the rates it had charged while reconsideration was pending and our rate cap, and to refund the excess directly to the entities originally billed.

Subsequently, we determined that we would not pursue any additional form of judicial review following the decision of the First DCA. On November 21, 1989, the Clerk of the First DCA issued mandate. By Order No. 23018, we directed that revenues being held subject to refund pursuant to Order No. 19095 be released, as the

ruling of the First DCA had the effect of negating the refund requirement of Order No. 20489.

ITI then appealed Orders Nos. 20489 and 22243. On January 15, 1991, the Supreme Court of Florida upheld our decisions on all issues appealed, except for the requirement in Order No. 22243 that ITI make direct refunds to the entities originally billed. The Court reversed this portion of our decision and remanded the case for further proceedings consistent with the Court's opinion.

By Order No. 24606, issued June 3, 1991, we directed ITI to refund, by means of a prospective reduction in its rates, all monies associated with charges imposed in excess of our AOS rate cap during the pendency of ITI's request for reconsideration and its subsequent appeal. In addition, we required ITI to file monthly reports with this Commission until the refund process has been completed.

PRESENT MOTION

On May 22, 1992, ITI filed a Motion for Extension of Time to File Reports (Motion). In support of its Motion, ITI states that it has in fact implemented the prospective rate reduction of $.25 per call in accordance with Order No. 24606. However, ITI asserts that its ability to provide monthly status reports in a timely fashion has been hampered due to pending litigation with its former data processing supplier. ITI states that it is working to develop the necessary information so that updated refund information can be filed with the Commission and so that its reports will be current as of June 30, 1992. Thereafter, ITI believes it will be in a position to timely submit its required reports on a monthly basis until the refund process is completed.

Upon consideration, we find it appropriate to grant ITI's Motion. We note, however, that while ITI may have encountered problems due to circumstances not entirely within its own control, it nevertheless was under Commission order to file its reports within a given time period. The Company should have promptly filed a request for relief once it became aware of its inability to fully comply with our Order. Instead, the Company filed only one report on October 31, 1991, covering the months of July, August, and September, 1991. It was not until our staff brought this matter to ITI's attention that we received a motion for extension of time from ITI. While we are not unsympathetic to the difficulties this Company may be experiencing, including possible disruptions due to

its recent corporate reorganization, we remind ITI that it remains charged with the ultimate responsibility for compliance with the terms and conditions of Commission directives, such as those contained in Order No. 24606. Relief from such requirements, even on a temporary basis, can only be obtained by filing an appropriate request for relief with the Commission.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Extension of Time to File Reports filed on May 22, 1992, by International Telecharge, Inc. is hereby granted to the extent set forth in the body of this Order. It is further

ORDERED that our proposed action shall become final on the first working day following the date set forth below, if no proper protest is filed to our proposed action within the time frame set out below. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 9th day of July, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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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.

The action proposed herein 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 July 30, 1992.

In the absence of such a petition, this order shall become effective on the day 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 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 wastewater 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.