

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation and determination of appropriate method for refunding interest and overcharges on intrastate 0+ calls made from pay telephones and in a call aggregator context by ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom.

DOCKET NO. 000349-TI
ORDER NO. PSC-00-1037-PAA-TI
ISSUED: May 25, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING ITC^DELTACOM TO REFUND OVERCHARGES

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On June 23, 1989, ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom (ITC^DeltaCom) was granted Certificate No. 2297 to provide interexchange telecommunications services. On February 1, 1999, Rule 25-24.630, Florida Administrative Code, was amended to cap rates on intrastate toll 0+ calls placed from pay telephones or a call aggregator context to \$.30 per minute plus \$3.25 for a person-to-person call or \$1.75 for a non person-to-person call. On January 3, 2000, our staff reviewed ITC^DeltaCom's tariff for compliance with Rule 25-24.630, Florida Administrative Code, and found that ITC^DeltaCom's tariffed rates appeared to exceed the rate cap.

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Our staff compared ITC^DeltaCom's tariff for operator service rates to the rate cap established in Rule 25-24.630, Florida Administrative Code. Based on the comparison, it appeared ITC^DeltaCom was charging \$2.25 for some non person-to-person calls instead of \$1.75 and \$4.90 for person-to-person calls instead of \$3.25. In addition, it appeared that ITC^DeltaCom was charging an operator-dialed surcharge of \$0.85 for a customer-dialed called number, and \$1.15 for an operator-dialed called number. Therefore, it appeared that the rates ITC^DeltaCom was charging exceeded the rate cap. On January 3, 2000, our staff wrote to ITC^DeltaCom and advised it of the discrepancy and requested information by January 20, 2000. Upon receipt of our staff's letter, an ITC^DeltaCom representative contacted our staff and advised that the oversight would be promptly corrected.

On January 21, 2000, ITC^DeltaCom's initial reply was received, with overcharges calculated for the period February 1, 1999, to December 31, 1999. The calculations for the period January 1, 2000, to January 18, 2000, were not complete at that time and would be forwarded under separate cover when received. On February 24, 2000, ITC^DeltaCom's final reply was received with the data for January 2000.

The company's tariff, which became effective March 5, 1999, included an operator-dialed surcharge in addition to the per minute rate and the person-to-person and non person-to-person surcharge. The company revised its tariff to remove the operator-dialed surcharge and lowered the person-to-person and non person-to-person surcharges to comply with the rate caps and ceased billing customers at the higher rates on January 19, 2000. On February 24, 2000, ITC^DeltaCom provided detailed information in response to our staff's letter and stated that 345 customers were overcharged a total of \$405.05.

Based on the foregoing, we accept ITC^DeltaCom's refund calculation pursuant to Rule 25-4.114, Florida Administrative Code. We find the amount of refunds should be \$405.05, adding interest of \$24.32, for a total of \$429.37, and proposal to credit customer bills beginning July 1, 2000, and ending July 31, 2000, for overcharging customers for 0+ intrastate toll calls placed from pay telephones and in a call aggregator context between February 1, 1999, and January 18, 2000. We further find that the refunds shall be made through credits to customers' bills beginning July 1, 2000. In addition, at the end of the refund period, any amount not

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refunded, including interest, shall be remitted to this Commission and forwarded to the Comptroller for deposit in the General Revenue Fund, pursuant to Chapter 364.285(1), Florida Statutes. ITC^DeltaCom should submit a final report as required by Rule 25-4.114, Florida Administrative Code by October 2, 2000.

By Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$25,000, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or Order of the Commission, or any provision of Chapter 364, Florida Statutes. We do not believe that ITC^DeltaCom's conduct rises to the level that warrants an Order to Show Cause. ITC^DeltaCom corrected the problem and cooperated fully with our staff during the investigation. Moreover, ITC^DeltaCom has agreed to refund those overcharged customers, including interest. Therefore, we find that it is not appropriate to initiate a Show Cause at this time.

It is therefore

ORDERED by the Florida Public Service Commission that ITC^DeltaCom, Communications, Inc. d/b/a ITC^DeltaCom's (ITC^DeltaCom) calculation of \$405.05, adding interest of \$24.32, for a total of \$429.37, and proposal to credit customer bills beginning July 1, 2000, and ending July 31, 2000, for overcharging customers for 0+ intrastate toll calls placed from pay telephones and in call aggregator contexts between February 1, 1999, and January 18, 2000, is accepted. The refunds shall be made through credits to customers' bills beginning July 1, 2000. It is further

ORDERED that at the end of the refund period, any amount not refunded, including interest, shall be remitted to the Commission and forwarded to the Comptroller for deposit in the General Revenue Fund, pursuant to Chapter 364.285(1), Florida Statutes. It is further


ORDERED that ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom shall submit a final report as required by Rule 25-4.114, Florida Administrative Code, by October 2, 2000. It is further

ORDERED that if no person, whose interests are substantially affected by the proposed action, files a protest within the 21 day protest period, the order shall become final and effective upon

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issuance of a Consummating Order. This docket shall 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 report, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 25th day of May, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

FRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 15, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

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.