

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation and
determination of method to
credit flow-through reductions
by eMeritus Communications, Inc.
as required by Section 364.163,
F.S.

DOCKET NO. 010488-TI
ORDER NO. PSC-02-0478-PAA-TI
ISSUED: April 8, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING REFUND

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.

I. CASE BACKGROUND

In 1998, Chapter 98-277, Section 4, General Laws of Florida,
amended Section 364.163(6), Florida Statutes. The amendment
modified existing requirements for switched access rate reductions
and the flow-through of those reductions to customers.

On June 8, 1998, we issued Order No. PSC-98-0795-FOF-TP
implementing the new statutory provisions (June Order). Two local
exchange companies (LECs), Verizon Florida Inc. (then known as GTE
Florida Incorporated) and Sprint-Florida, Incorporated, were
required to make two switched access reductions. The first was 5
percent, to be effective on July 1, 1998, and the second, of 10

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percent, was to be effective on October 1, 1998. IXCs were required to flow-through to their customers the benefits of the switched access rate reductions.

Section 364.163(6), Florida Statutes, as amended, required that IXCs meet three flow-through requirements. (1) An IXC's intrastate rates were to be decreased by the amount necessary to return the benefits of the switched access reduction to its customers. (2) An IXC was not permitted to reduce per minute intraLATA toll rates by a percentage greater than the required per minute switched access rate reduction. (3) An IXC was permitted to determine the specific rates to be decreased, provided that both residential and business customers benefitted from the decreases.

For the July 1, 1998, rate reduction, the June Order required the LECs to file their tariffs and supporting documentation no later than June 9, 1998. IXC tariffs and supporting documentation were ordered to be filed no later than June 30, 1998, with a July 1, 1998, effective date.

For the October 1, 1998, reduction, LECs were ordered to file their tariffs and supporting documentation no later than September 1, 1998. All affected IXCs were ordered to file their tariffs and supporting documentation no later than September 30, 1998 to be effective October 1, 1998.

eMeritus filed its tariffs on time for both reductions. Our staff reviewed the tariff changes and with certain minor changes found that it was in compliance with the June Order, and, therefore, with Section 364.163(6), Florida Statutes.

The Florida Public Service Commission is vested with jurisdiction over this matter pursuant to Sections 364.163 and 364.285, Florida Statutes.

II. DISCUSSION OF ISSUES

Beginning in June 1999, our staff initiated audits to verify that affected carriers had implemented the flow-through reductions in accordance with the filings each had submitted in response to the June Order.

In February 2000 and July 2000, our staff issued an original and a supplemental audit report which concluded that eMeritus had not passed through the rate reductions. The audit found that the company was originally charging its USA Savings Plan customers the rates per tariff sheet #38, issued December 19, 1996. In January 1998, it filed a new tariff which increased rates. The company never implemented the rate increase. However, when the company filed its revised tariff pages to comply with the order to reduce rates to account for the switched access charge reductions, it based the reduction on the January tariff which was never implemented.

The auditors also sampled several bills to determine whether the revised tariff rates were used and found several inconsistencies. Some bills in September 1998 appear to have been billed the July 1998 rate and others were billed the October 1998 rate. Several times during the audit, the auditors requested a minutes-of-use report in order to quantify the cost impact on customers based on the rates the company charges. The company delayed providing a report and ultimately requested that alternative means be used to determine the cost impact on customers, as producing the report would be costly.

Our staff conversed with representatives of eMeritus several times in an attempt to agree on alternative methods to determine the impact and resolve the issue. On February 18, 2002, the company submitted a letter discussing an offer of settlement which quantified the differences in the tariff rates and the impact on the costs to the customers. The company no longer provides service to residential customers and, therefore, cannot make a refund to those specific customers. It has proposed, however, to issue a one-time refund to its current business customers that have been its customers since 1998. We approve this plan because the refunds will go to the company's long-term customers.

In its proposal eMeritus did not specify an exact payback date and therefore only estimated the interest due. Instead, it proposed a payback schedule that is dependent on the date that the Consummating Order is issued, stating the one-time credit would appear on customers' bills in the second billing cycle after the Order is issued. We estimate that this will occur during June 2002 and calculated the interest accordingly.

III. DECISION

We accept the offer of refund and the refund calculation of \$13,584.00, plus interest of \$2,250.63, for a total of \$15,834.63, proposed by eMeritus. The one-time refund should be paid during June 2002 to the customers identified by the company. At the end of the refund period, any amount not refundable, including interest, shall be remitted to the Commission by July 31, 2002, and forwarded to the Comptroller for deposit in the General Revenue Fund. eMeritus should submit a final report as required by Rule 25-4.114, Florida Administrative Code, Refunds, by July 31, 2002. The docket should be closed administratively once the refund is complete and the final report is received and reviewed by our staff.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the method proposed by eMeritus Communications, Inc. to resolve the failure to flow-through access charge reductions to its customers is hereby accepted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless and appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this one-time refund in the amount of \$15,834.63 shall be paid during June 2002 to the business customers identified by the company who have been its customers since 1998. It is further

ORDERED that at the end of the refund period, any amount not refundable, including interest, shall be remitted to the Commission by July 31, 2002. It is further

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ORDERED that eMeritus Communications, Inc. shall submit a final report as required by Rule 25-4.114, Florida Administrative Code, Refunds, by July 31, 2002. It is further

ORDERED that this docket shall be closed administratively once the refund is complete and the final report is reviewed by our staff.

By ORDER of the Florida Public Service Commission this 8th Day of April, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing
Services

(S E A L)

JAE

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.

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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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on April 29, 2002.

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/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.