

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation and determination of appropriate method for refunding overcharges, and interest, assessed on intrastate calls made using prepaid calling services by Ultimate Communications, Inc.

DOCKET NO. 020049-TI
ORDER NO. PSC-02-0479-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 OF OVERCHARGES ASSESSED ON
INTRASTATE CALLS MADE USING PREPAID CALLING SERVICES

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

On August 3, 1999, Ultimate Communications, Inc. (Ultimate Communications) obtained Certificate No. 7036 which authorizes the company to operate as an interexchange company in Florida. On October 15, 2001, our staff investigated two prepaid phone cards branded as *The Nickel Card* and *Universal Prepaid Phonecard*, and determined that Ultimate Communications is the prepaid calling services provider for both phone cards. On November 8, 2001, our staff mailed Ultimate Communications a certified letter informing

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the company of apparent rule violations and overcharges. We requested a written response by December 3, 2001. At the company's request, we extended the due date to December 20, 2001. On December 20, 2001, Ultimate Communications submitted its response to our staff's letter which included the company's proposed method to refund apparent overcharges. Our staff subsequently requested that the company clarify the time periods in which the overcharges occurred. On January 10, 2002, we received Ultimate Communications' clarifications to its refund proposal. On January 15, 2002, we opened this docket to address Ultimate Communications' proposed method to refund overcharges.

We are vested with jurisdiction over this matter pursuant to Sections 364.08 and 364.19, Florida Statutes.

II: DISCUSSION OF ISSUES

We believe the fine is appropriate for the violations of Rules 25-24.920(6) and 25-24.920(9), Florida Administrative Code. Rule 25-24.920(6), Florida Administrative Code, Standards for Prepaid Calling Card Services and Consumer Disclosure, states:

A company shall not reduce the value of a card by more than the charges printed on the card, packaging, or visible display at the point of sale.

Rule 25-24.920(9), Florida Administrative Code, Standards for Prepaid Calling Card Services and Consumer Disclosure, states:

Conversation time of less than a full minute shall not be rounded up beyond the next full minute.

Based on our evaluation, the value of the *Universal Prepaid Phonecard* was charged down by more than the charges printed on the card or visible display in apparent violation of Rule 25-24.920(6), Florida Administrative Code, and intrastate calls were rounded up beyond the next full minute in apparent violation of Rule 25-24.920(9), Florida Administrative Code. *The Nickel Card* was billed in one-minute increments and the value of the card was reduced according to the charges printed on the card. Thus, no overcharges were evident for *The Nickel Card*.

Ultimate Communications investigated the apparent overcharges and submitted its response in which the company indicated it overcharged end-users of the *Universal Prepaid Phonecard* by the following amounts:

- Overcharging the maintenance fee by \$0.06 for each call made. The amount actually charged was \$0.55, but the amount disclosed at the point of sale was \$0.49.
- \$0.019 for each minute that was overcharged due to rounding up the last minute of the call to the next highest third minute.

Ultimate Communications reported that 62,344 minutes of extra time was deducted from intrastate calls made from October 1, 2000, to December 1, 2001. In addition, the company reported that 11,696 intrastate calls made from February 1, 2001, to December 1, 2001, were affected by the higher weekly maintenance fee. The refund of \$1,886.30 proposed by Ultimate Communications is based on the following:

1. Weekly maintenance fees overcharged by \$701.76.
2. Three-minute rounding caused overcharges of \$1,184.54.

Our Staff then used the amount of \$1,886.30 as the basis for calculating interest of \$56.55.

To resolve the overcharges caused by the apparent violations of Rule Nos. 25-24.920(6), and 25-24.920(9), Florida Administrative Code, Ultimate Communications proposes to make a lump sum payment to the General Revenue Fund. Ultimate Communications indicated that it understands that the preferred method would be to refund the overcharges to the individual customers, but due to the nature of this prepaid calling card product, it is not feasible to refund the overcharges to the affected customers. A record of the customers does not exist. Staff concurs with the company and believes the best alternative to refunding the overcharges to the customers is that proposed by Ultimate Communications, which is to contribute the amount of the overcharges to the General Revenue

Fund. This method is consistent with previous refund resolution proposals accepted for overcharges on prepaid calling cards.

In addition, Ultimate Communications has revised the printing on the *Universal Prepaid Phonocard* and *The Nickel Card* so that they comply with all applicable rules. Ultimate Communications has also submitted a revision to its tariff to include the correct surcharges and corrected the call timing so that intrastate calls are now rounded to the nearest minute instead of the nearest three minutes. It appears that Ultimate Communications has taken the necessary actions to remedy the problems that caused the apparent rule violations and subsequent overcharges.

III. DECISION

Based on the aforementioned, we hereby accept Ultimate Communications' offer to submit a lump sum payment of \$1,886.30, plus interest of \$56.55, for a total of \$1,942.85, to the General Revenue Fund for overcharging end-users on intrastate calls made using prepaid calling services provided through the *Universal Prepaid Phonocard* from October 1, 2000, through December 1, 2001. The payment shall be received within fourteen calendar days after the issuance of the Consummating Order and should identify the docket number and company name. The payment shall be forwarded to the Office of the Comptroller for deposit in the General Revenue Fund. If Ultimate Communications, Inc. fails to pay in accordance with its offer, Certificate No. 7036 shall be canceled administratively. If Ultimate Communications' certificate is canceled in accordance with this Order, Ultimate Communications shall immediately cease and desist providing Interexchange telecommunications services in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the method proposed by Ultimate Communications, Inc. to resolve the overcharges addressed in this docket is hereby accepted. It is further

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ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an 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 if this Order becomes final, the \$1,942.85 contribution shall be received by this Commission within fourteen calendar days from the issuance of the Consummating Order. The payment must identify the docket number and company name. It is further

ORDERED that upon receipt of the \$1,942.85 contribution, we shall forward it to the Office of the Comptroller for deposit in the State of Florida General Revenue Fund. It is further

ORDERED that in the event this Order becomes final and the \$1,942.85 contribution is timely received in accordance with this Order, this docket may be closed administratively. It is further

ORDERED that if Ultimate Telecommunications, Inc. fails to pay the contribution in accordance with the terms of this Order, the company's certificate shall be canceled, and this docket shall be closed and Ultimate Communications, Inc. shall immediately cease and desist providing Interexchange Telecommunications services in Florida.

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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.