

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation and determination of appropriate method for refunding overcharges assessed on intrastate calls made using one plus service provided by Optical Telephone Corporation.

DOCKET NO. 020724-TI  
ORDER NO. PSC-02-1653-PAA-TI  
ISSUED: November 26, 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 ONE PLUS SERVICE PROVIDED  
BY OPTICAL TELEPHONE CORPORATION

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.

CASE BACKGROUND

On September 14, 2001, Optical Telephone Corporation (Optical) obtained Certificate No. 7898 authorizing the company to operate as an interexchange company in Florida. During the period of April 4, 2002, through July 12, 2002, our staff corresponded with the company regarding consumer complaints. During this process, the

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ORDER NO. PSC-02-1653-PAA-TI

DOCKET NO. 020724-TI

PAGE 2

company reported to our staff that it had overcharged customers for one plus services. On July 15, 2002, we opened this docket to address Optical's proposed method to refund overcharges.

Based on information provided by Optical, staff filed a recommendation for the October 15, 2002, Agenda Conference. Afterwards, our staff received a facsimile from the company's counsel stating that the amount of the overcharges had been miscalculated and the numbers our staff used in the recommendation were erroneous. Based on this new information, this docket was deferred to the November 5, 2002, Agenda Conference. Our staff needed additional time to revise the interest calculations and revise the recommendation.

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

#### DISCUSSION

Rule 25-24.485(1)(i), Florida Administrative Code, Tariffs, states, in part:

Companies shall charge only the rates contained in their tariff. . . .

During our investigation of consumer complaints filed against Optical, the company voluntarily reported that customers were charged higher rates for intrastate calls than the rates listed in the tariff. Optical overcharged 13,357 customers a total of 2,488,170 minutes during the time period of August 31, 2001, through June 3, 2002.

To resolve this matter, Optical proposes to refund the affected customers by December 30, 2002. Optical will issue instructions to its billing services company to issue credits. The billing company will, in turn, forward the instructions to the applicable Local Exchange Carrier (LEC). Credits will appear on the customers' LEC bill. Optical will submit all unrefundable credits, including interest, to us for forwarding to the Comptroller for deposit in the General Revenue fund, pursuant to Section 364.285(1) Florida Statutes.

DECISION

Upon consideration, we accept Optical's proposal to refund to the affected customers \$132,227.06, plus interest of \$2,387.76, for a total of \$134,614.82, for overcharges made on intrastate calls made using Optical's one plus service from August 31, 2001, through June 3, 2002. At the end of the refund period, any unrefunded amount, including interest, shall be remitted to us by April 4, 2003, and forwarded to the Comptroller for deposit in the General Revenue Fund, pursuant to Section 365.285(1), Florida Statutes. Optical shall submit a final report as required by Rule 25-4.114, Florida Administrative Code, Refunds, by April 4, 2003. If Optical fails to pay in accordance with its refund offer, Certificate No. 7898 shall be canceled administratively. If Optical's certificate is canceled in accordance with our Order, Optical shall be required to 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 Optical Telephone Corporation to resolve the overcharges addressed in this docket is hereby accepted. It is further

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 at the end of the refund period, any unrefunded amount, including interest, shall be remitted to us by April 4, 2003, and forwarded to the Comptroller for deposit in the General Revenue Fund, pursuant to Section 365.285(1), Florida Statutes. It is further

ORDER NO. PSC-02-1653-PAA-TI  
DOCKET NO. 020724-TI  
PAGE 4

ORDERED Optical Telephone Corporation shall submit a final report as required by Rule 25-4.114, Florida Administrative Code, Refunds, by April 4, 2003. It is further

ORDERED that 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 refund report, this docket shall be closed administratively. It is further

ORDERED that if Optical Telephone Corporation fails to pay in accordance with its refund offer, Certificate No. 7898 shall be canceled administratively, and this docket shall be closed and Optical Telephone Corporation shall immediately cease and desist providing Interexchange Telecommunications services in Florida.

By ORDER of the Florida Public Service Commission this 26th Day of November, 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 )

WDK

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 the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 17, 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.