

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 and calling card services provided by Florida Digital Network, Inc. d/b/a FDN Communications.

DOCKET NO. 030872-TI
ORDER NO. PSC-03-1321-PAA-TI
ISSUED: November 19, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING SETTLEMENT PROPOSAL

I. CASE BACKGROUND

On July 6, 1999, Florida Digital Network, Inc. d/b/a FDN Communications (FDN) obtained Certificate No. 7048 authorizing the company to provide interexchange telecommunications services in Florida.

On March 11, 2002, through April 11, 2002, our staff evaluated the quality of service from access lines presubscribed to FDN during a telephone service evaluation in the Miami exchange. In addition to the Miami evaluation, our staff also evaluated the quality of service from access lines presubscribed to FDN during a telephone service evaluation in the Lakeland exchange from September 9, 2002, through October 4, 2002.

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FPSC-COMMISSION CLERK

After investigating the matter, FDN contacted our staff on January 14, 2003, regarding the service evaluations in the Miami and Lakeland exchanges.

On April 28, 2003, our staff evaluated the quality of service from access lines presubscribed to FDN to verify the corrective actions FDN put in place to solve the problems discovered during the previous service evaluations listed above. Satisfied with the quality of service, our staff opened this docket on August 29, 2003, to determine the appropriate method for refunding overcharges FDN assessed on intrastate calls made using one plus dialing and calling card services. On September 26, 2003, FDN submitted its proposal to refund the overcharges absent interest. After reviewing FDN's proposal our staff notified FDN of its requirement to pay interest and they agreed to do so. Our staff then used FDN's proposed payment amount to calculate the interest to be paid by the company, and added the interest to the original proposal.

II. Jurisdiction

We are vested with jurisdiction over this matter pursuant to Sections 364.04, 364.285, and 364.604, Florida Statutes, and make the following findings.

III. Apparent Deficiency

Our staff routinely conducts telephone service evaluations to determine if companies are timing calls and billing customers in accordance with tariffed rates. During two quality of service evaluations on access lines presubscribed to FDN, our staff determined that FDN was overcharging customers for one plus calls and calling card calls. Our staff requested that FDN investigate the overcharges, determine the magnitude, and propose to refund the affected customers.

According to FDN, an inaccuracy in the calculation of call duration in its billing system resulted in the following overcharges:

- I. Each affected call made using one plus dialing was overcharged by 0.10 minute. The per minute rate for intrastate long distance was \$.06, therefore, each affected one plus call was overcharged by \$.006. A total of 2,236,470 one plus calls were affected which effectuated overcharges in the amount of \$13,418.82. Of this amount, \$10,205.52 pertains to open accounts and \$3,213.29 pertains to closed accounts.
- II. Each affected call made using the calling card services was overcharged by \$.06. A total of 24,227 calling card calls were affected which effectuated overcharges in the amount of \$1,453.60. Of this amount, \$730.30 pertains to open accounts and \$723.30 pertains to closed accounts.
- III. The billing error first occurred on May 1, 2001, and was corrected on January 27, 2003. The customer bills should no longer reflect the billing system error as of March 1, 2003.

As stated above, FDN acknowledges and admits to overcharging some of their customers due to an error in their billing system. Section 364.04, Florida Statutes, Schedules of Rates, Tolls, Rentals, Contracts, and Charges; Filing; Public Inspection; states, in pertinent part:

Companies shall charge only the rates contained in their tariff

Section 364.285(2), Florida Statutes, Penalties; states in pertinent part that

The Commission may, at its discretion, . . . compel the accounting and refund of any moneys collected in violation of this chapter or commission rule.

Inherent in our authority to issue a refund is the ability to calculate the refund with interest. FDN has therefore agreed to refund all charges in excess of the rates contained in its tariff back to the affected customers with interest.

II. FDN's PROPOSED REFUND

To resolve this matter, FDN proposed to refund the overcharges in the following method:

- i. Within sixty (60) days after the issuance date of the Consummating Order, refund any overcharges through credits to affected open accounts and closed accounts with a remaining balance.
- ii. Refund overcharges amounting to \$1.00 or more on any closed accounts by company check mailed to the customer's last known address. Checks not cashed within 60 days after issuance would be considered unclaimed and the amounts would be contributed in one lump sum to the State General Revenue Fund.
- iii. Any overcharges due on closed accounts which do not exceed \$0.99 will be contributed to the State General Revenue Fund. The cost of issuing checks for refunds under \$1.00 exceeds the amount of the refund due to the customer.
- iv. File a final report with the Commission within 180 days of the issue date of the Consummating Order affirming account information, amounts credited, checks issued, and amounts unclaimed and paid to the State General Revenue Fund.

Based on the aforementioned, we agree with the logic and rationale behind FDN's proposal to refund and refund calculation of \$14,872.42, plus interest of \$404.92, totaling \$15,277.34, for overcharges on intrastate calls made using one plus service and calling card service from May 1, 2001, through February 28, 2003. In addition, FDN's refund proposal is consistent with similar refund proposals accepted this Commission in previous dockets.

III. Conclusion

We accept Florida Digital Network Inc.'s proposal to refund and refund calculation of \$14,872.42, plus interest of \$404.92,

totaling \$15,277.34, for overcharges on intrastate calls made using one plus service and calling card service from May 1, 2001, through February 28, 2003. All refunds will be completed within sixty (60) days of the issuance date of the Consummating order. Any un-refunded amounts as well as a final report, will be remitted to this Commission within 180 days of the issuance date of the Consummating Order. If FDN fails to comply with its refund proposal, the company's tariff will be cancelled and registration number TJ246 will be removed from the register. If FDN's tariff is cancelled and registration number TJ246 is removed from the register, FDN will be required to immediately cease and desist providing intrastate interexchange telecommunications services in Florida.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Digital Network Inc.'s refund \$14,872.42, plus interest of \$404.92, totaling \$15,277.34, for overcharges on intrastate calls made using one plus service and calling card service from May 1, 2001, through February 28, 2003. All refunds will be completed within sixty (60) days of the issuance date of the Consummating order. If Florida Digital Network Inc.'s fails to comply with its refund proposal, the company's tariff will be cancelled and registration number TJ246 will be removed from the register. If Florida Digital Network Inc.'s tariff is cancelled and registration number TJ246 is removed from the register, it should be required to immediately cease and desist providing intrastate interexchange telecommunications services in Florida. It is further

ORDERED that any un-refunded amounts and a final report should be remitted to the Commission within 180 days of the issuance date of the Consummating Order. If Florida Digital Network Inc.'s fails to comply, the company's tariff will be cancelled and registration number TJ246 will be removed from the register. If Florida Digital Network Inc.'s tariff is cancelled and registration number TJ246 is removed from the register, it should be required to immediately cease and desist providing intrastate interexchange telecommunications services in Florida. It is further

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ORDERED that if no timely protest to this proposed agency action is filed within 21 days of its issuance, this Commission's Order will become final upon the issuance of a Consummating Order. This docket will, however, 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 will be closed administratively. It is further

ORDERED that if no person, whose interests are substantially affected by the proposed action files a protest of the Commission's decision in Issue 1 within the 21 day protest period, the Commission's Order will become final upon issuance of the Consummating Order. This docket will, however, 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 will be closed administratively.

By ORDER of the Florida Public Service Commission this 19th Day of November, 2003.

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

By: Marcia Sharma
Marcia Sharma, Assistant Director
Division of the Commission Clerk
and Administrative Services

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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 10, 2003.

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.