

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

MARCH 6, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (COX) *WPC MCB*
DIVISION OF COMMUNICATIONS (ISLER; LEWIS) *C.R.L. IN WU*

RE: DOCKET NO. 961149-TI - WILTEL NETWORK SERVICES, INC. -
INITIATION OF SHOW CAUSE PROCEEDINGS FOR VIOLATION OF
RULES 25-24.485(1)(i), FLORIDA ADMINISTRATIVE CODE,
TARIFFS

AGENDA: MARCH 18, 1997 - REGULAR AGENDA -
- INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\LEG\WP\961149TI.RCM

CASE BACKGROUND

As part of a service evaluation, staff made test calls in March, 1996, that revealed WilTel Network Services, Inc. (WilTel) was not properly rating intrastate calls by billing a \$0.35 surcharge which was not reflected in its tariffs.

The surcharge was billed to casual users between February 1, 1996 and June 15, 1996. According to WilTel, the company derived actual revenues of \$132,788.60 from the overcharge. On June 10, 1996, WilTel filed an amended tariff with the Commission adding the surcharge. Between June 16, 1996, and November 15, 1996, the company did not bill casual users the \$0.35 surcharge to compensate for the period it billed the surcharge improperly. WilTel advised staff that based on the number of casual calls made by end users during the June 16 to November 15, 1996 period, it estimated it would have billed approximately \$140,000 in revenues and believes that this voluntary waiver of the surcharge sufficiently compensates its Florida customers.

While staff prefers direct refunds to overcharged customers, this case is different from refunds in a call aggregator scenario, where a third party picks their preferred carrier and profits from the caller's use of that carrier. In this case, the overcharges

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were applied to customers who, on their own, chose to use WilTel. WilTel maintains that it was an oversight on its part that a tariff authorizing them to collect the charges in question was not filed. WilTel could have legitimately charged more simply by filing the tariff. WilTel did not exceed any rate cap established by the Commission and could at any time increase the rates involved as it sees fit.

On February 6, 1997, staff filed a recommendation to accept WilTel Network Services, Inc.'s method of waiving the surcharge on intrastate long distance calls and order the company to show cause why it should not be fined \$5,000 for violation of Rule 25-24.485 (1)(i), Florida Administrative Code, Tariffs. Prior to the scheduled February 18, 1997, Agenda Conference date, WilTel wrote the Commission and offered to contribute \$5,000 to the State of Florida General Revenue Fund in lieu of the Commission initiating a show cause proceeding. Therefore, staff believes the following recommendations are appropriate.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept WilTel Network Services, Inc.'s proposed settlement offer in lieu of requiring the company to show cause for violation of Rule 25-24.485(1)(i), Florida Administrative Code, Tariffs?

RECOMMENDATION: Yes. The Commission should accept WilTel Network Services, Inc.'s proposed settlement to pay a \$5,000 contribution to the Commission to be deposited in the general revenue fund within 30 days from the date the Order becomes final and forego a show cause proceeding. Staff also recommends that WilTel be required to provide a detailed written report outlining the exact amount of revenues for the surcharge foregone during the period of June 16 to November 14, 1996, within 30 days of the date the Order becomes final.

STAFF ANALYSIS: Staff performed a service evaluation in March, 1996, of WilTel's services with the cooperation of the company and the understanding that the Commission would be directly billed as a basic subscriber. A basic subscriber is a customer who has established an account with WilTel.

A review of the bills and WilTel's tariffs revealed that WilTel billed the Commission the correct per minute charge, but added a \$0.35 surcharge to each long distance intrastate call. Rule 25-24.485(1)(i), Florida Administrative Code, Tariffs, states, in pertinent part, that "Companies shall charge only the rates contained in their tariff."

At the time of staff's initial investigation, WilTel's current tariff, Section 3.7.17, dealing with casual calling, outlined which rate was applicable, but did not reflect a \$0.35 surcharge. (Attachment A) When staff questioned WilTel about the discrepancy, WilTel advised that, although it did receive notification of the Commission's test, an account was not established due to an oversight within the company. Therefore, WilTel billed the Commission as though it were a casual end user, which is defined as someone who has not pre-established an account with WilTel or someone who dials WilTel's access code before the area code and 7-digit number.

Staff's investigation revealed that WilTel billed casual callers an additional \$0.35 surcharge between February 1, 1996 and June 15, 1996, and the company received revenues on the surcharge totaling \$132,788.60. To correct the immediate problem of billing more than the rates in the company's tariff, WilTel filed an amended tariff (Attachment B) which added the \$0.35 surcharge to

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each casual call billed. The company advised staff that it failed to file the Florida intrastate tariff reflecting the new surcharge when the charge was implemented due to an oversight.

On July 2, 1996, three weeks after staff notified WilTel of the discrepancy, staff received a letter from WilTel dated June 28, 1996, advising staff that as of June 16, 1996, it had voluntarily implemented the suspension of the \$0.35 surcharge on casual calls and would not bill end users the surcharge until October 1, 1996. WilTel advised staff that instead of issuing direct refunds to the customers who were overcharged, it believed that by waiving the surcharge on future calls, this plan would be the fastest way of resolving the issue and would more than compensate the Florida end users.

On November 1, 1996, WilTel advised staff that the foregone revenues from the surcharge during the period from June 16, 1996, to September 22, 1996, amounted to \$93,256.06, or an average of \$932.56 per day. Based on the daily average, WilTel estimated that from June 16 to November 14, it would have "foregone revenue" in the amount of \$143,558.46, which is more than the actual overcharging in the amount of \$132,788.60.

However, presently, WilTel has not provided staff with the actual amount of "foregone revenues" for the period it waived the \$0.35 surcharge (June 16 to November 14, 1996). Therefore, staff recommends that WilTel provide staff with a detailed written report outlining the exact amount of revenues for the period in question within 30 days from the date the Order becomes final.

It was also staff's intention to recommend the Commission initiate proceedings against WilTel to show cause why it should not be fined \$5,000 for allegedly billing Florida consumers a surcharge that was not reflected in its tariffs. In WilTel's proposed settlement (Attachment C), the company offered to pay into the State General Revenue Fund a \$5,000 contribution. Therefore, we believe the \$5,000 payment should be accepted and forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. The \$5,000 payment should be remitted within 30 days of the date the Order becomes final.

While staff prefers direct refunds to overcharged customers, this case is different from refunds in a call aggregator scenario, where a third party picks their preferred carrier and profits from the caller's use of that carrier. In this case, the overcharges were applied to customers who, on their own, chose to use WilTel. WilTel maintains that it was an oversight on its part

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that a tariff authorizing them to collect the charges in question was not filed. WilTel could have legitimately charged more simply by filing the tariff. WilTel did not exceed any rate cap established by the Commission and could at any time increase the rates involved as it sees fit. Under the circumstances, we recommend accepting WilTel's proposed settlement with its presubscribed customers while at the same time penalizing WilTel for failure to tariff charges it billed its customers.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed with the approval of Issue 1, remittance of the \$5,000 contribution, and receipt by staff of the detailed written report within 30 days of the date the Order becomes final.

STAFF ANALYSIS: If the Commission accepts staff's recommendation in Issue 1, upon remittance of the \$5,000 contribution by WilTel, and receipt by staff of the detailed written report within 30 days of the date the Order becomes final, this docket should be closed.

SECTION 3 - DESCRIPTION OF SERVICE (Cont'd)

3.7. MESSAGE TELECOMMUNICATIONS SERVICES (Cont'd)

3.7.17. Casual Calling

Customers may access Measured Service by means of Casual Calling. In Casual Calling, the Company allows Customers calling from a telephone not pre-subscribed to the Company or Customers without an established account with the Company to place calls by dialing either 10555 or another Company accepted access number. Casual Calls accepted by the Company will be billed at the WilPlus I Service rates listed in Section 4.6.1. In addition, Casual Calls will not be subject to a minimum monthly requirement, will not be subject to any recurring or non-recurring Ancillary Charges and will not receive any type of discount.

3.7.18. Prepaid Calling Card

Prepaid Calling Card Service allows Customers who pay in advance to complete calls via a Company-provided 800 number printed on the Prepaid Calling Card. Calls to 700, 900, 950 or 800 numbers, other than the 800 number printed on the card, may not be completed with the card.

Prepaid Calling Card Service card balances will be reduced and depleted based upon customer usage. Customer will be given notice one minute before the available card balance is depleted, based on the terminating location of the call. When the available balance is depleted, the call will be terminated.

Prepaid Calling Card Service cards are non-refundable and will expire on the date specified on the card, carrier or package in which the card is included.

Three types of Prepaid Calling Cards are offered: Basic Promotional Prepaid Calling Card, Enhanced Promotional Calling Card and Standard Prepaid Calling Card.

3.7.18.A Basic Promotional Prepaid Calling Card

1. Basic Promotional Prepaid Calling Card ("Promotional Card") Service offers direct dial Outbound Service and Directory Assistance. Promotional Card Service will be used for Customer's promotional purposes only, and the cards will be distributed through Customer's outlets and products. All advertising and promotional materials which refer to the Customer and the Company shall be jointly approved.
2. Promotional Cards are available in whole dollar denominations up to \$100. Calls placed via Promotional Card Service are billed in one minute increments with a one minute minimum initial period. A standard per minute rate is charged with no time-of-day discount. No Operator Service calls may be completed with the card. See Price List for current rates.

* Material on this page was previously found in the WilTel FPSC Tariff No. 1, First Revised Sheet 26.21.

ISSUED: April 10, 1995

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EFFECTIVE: JUL 27 1995

Issued by:

Brian K. Sulmonetti
Director, Regulatory Affairs
WorldCom Network Services, Inc.
d/b/a WilTel Network Services
1515 South Federal Highway, Suite 400
Boca Raton, FL 33432-7404

1ST REVISED SHEET 108
CANCELS ORIGINAL SHEET 108

SECTION 3 - DESCRIPTION OF SERVICE (Cont'd)

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In addition to the above-referenced WilPlus I service rates, customers who access measured service by means of casual calling will be charged a Per Call Surcharge of \$0.35.

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(N)

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ISSUED: June 10, 1996

EFFECTIVE:

Issued by:

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Brian K. Sulmonetti
Director, Regulatory Affairs
WorldCom Network Services, Inc.
d/b/a WilTel Network Services, Inc.
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WITEL**BY FACSIMILE:**

Mr. Alan Taylor
Chief, Bureau of Service Evaluation
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

RE: Docket No. 961149-T1 -- Determination of appropriate method of refunding overcharges by WorldCom Network Services, Inc. d/b/a Witel Network Services on intrastate long distance calls.

Dear Alan:

Pursuant to our recent conversation in the above referenced docket, Witel is offering the following settlement.

Witel hereby agrees with the FPSC Staff in supporting Witel's proposal of a voluntary general rebate be accepted for purposes of customer reimbursement (Issue 1 in the Staff recommendation dated February 6, 1997). Witel would also offer to make a contribution of \$5,000 to the General Revenue Fund of the State of Florida. This offer does not constitute an admission or acknowledgment of any violation of any rule or regulation but is made because Witel believes that there are benefits to the parties and consumers to an expeditious resolution of this matter. Further, in making this offer, Witel has not abandoned or conceded any issue or position that it might have taken.

I believe this offer meets our mutual goal of resolving this docket in a timely fashion and avoiding anymore expense to the parties. If you have any questions regarding this offer, please contact me at 561-750-2940. I look forward to a prompt resolution of this matter. Thank you.

Sincerely yours,



Brian Sulmonetti
Director, Regulatory Affairs