



Public Service Commission

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CLERK

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RECEIVED FPSC

DATE: OCTOBER 24, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF COMPETITIVE MARKETS & ENFORCEMENT (FONDO) *AT*
OFFICE OF THE GENERAL COUNSEL (KNIGHT, DODSON) *SK*
DIVISION OF ECONOMIC REGULATION (D. DRAPER) *DM WJK JRS*

RE: DOCKET NO. 020724-TI - INVESTIGATION AND DETERMINATION OF
APPROPRIATE METHOD FOR REFUNDING OVERCHARGES ASSESSED ON
INTRASTATE CALLS MADE USING ONE PLUS SERVICE PROVIDED BY
OPTICAL TELEPHONE CORPORATION.

AGENDA: 11/05/2002 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: DEFERRED FROM 10/15/2002 AGENDA CONFERENCE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\020724RV.RCM

CASE BACKGROUND

- September 14, 2002 - Optical Telephone Corporation (Optical) obtained Certificate No. 7898 authorizing the company to operate as an interexchange company in Florida.
- April 4, 2002 - July 12, 2002 - Staff corresponded with the company regarding consumer complaints. During this process, the company reported to staff that it had overcharged customers for one plus services.
- July 15, 2002 - Staff opened this docket to address Optical's proposed method to refund overcharges.

DOCUMENT NUMBER-DATE

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- October 3, 2002 - Based on information provided by Optical, staff filed a recommendation for the October 15, 2002, Agenda Conference. Afterwards, staff received a facsimile from the company's counsel stating that the amount of the overcharges had been miscalculated and the numbers staff used in the recommendation were erroneous. Based on this new information, staff requested and the Chairman approved deferral of this docket to the November 5, 2002, Agenda Conference. Staff needed additional time to revise the interest calculations and revise the recommendation.

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.08 and 364.19, Florida Statutes. Staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept Optical Telephone Corporation's offer of refund and refund calculation of \$132,227.06 plus interest of \$2,387.76, for a total of \$134,614.82, for overcharges to customers on intrastate calls made using one plus service from August 31, 2001 through June 3, 2002?

RECOMMENDATION: Yes. The Commission should 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, should be remitted to the Commission 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 should be canceled administratively. If Optical's certificate is canceled in accordance with the Commission's Order, Optical should be required to immediately cease and desist providing interexchange telecommunications services in Florida. **(FONDO, KNIGHT, DODSON, D. DRAPER)**

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

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

During staff's 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

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the customers' LEC bill. Optical will submit all unrefundable credits, including interest, to the Commission for forwarding to the Comptroller for deposit in the General Revenue fund, pursuant to Section 364.285(1) Florida Statutes.

Based on the aforementioned, staff recommends that the Commission should 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, should be remitted to the Commission 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 should be canceled administratively. If Optical's certificate is canceled in accordance with the Commission's Order, Optical should be required to immediately cease and desist providing interexchange telecommunications services in Florida.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: 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 should, however, remain open pending the completion of the refund and receipt of the final report on the refund, April 4, 2003. After completion of the refund and receipt of the final refund report, this docket should be closed administratively. **(KNIGHT, DODSON)**

STAFF ANALYSIS: Whether staff's recommendation on Issue 1 is approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, the Commission's Order will become final upon the issuance of a Consummating Order. This docket should, 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 should be closed administratively.