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COMMISSIONER
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: April 23, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (M. Watts) *MW*
Division of Economic Regulation (Livingston) *CL*
Office of the General Counsel (Morrow) *AM*
Division of Service, Safety & Consumer Assistance (P. Buys) *PS* *ALM* *AM*

RE: Docket No. 090161-TL – Investigation and determination of appropriate method for issuing out-of-service credits to all affected customers of ITS Telecommunications Systems, Inc.

AGENDA: 05/05/09 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCP\WP\090161.RCM.DOC

Case Background

ITS Telecommunications Systems, Inc. (ITS) is certificated as a local exchange telecommunications company (LEC) with the Florida Public Service Commission (the Commission).

As part of the Commission's service quality evaluation program, staff conducted a comprehensive telephone service evaluation of ITS' only exchange, Indiantown, during the

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period May 19, 2008, to June 6, 2008. As part of the evaluation, staff reviewed repair services for compliance with the Commission's service standards.

Staff analyzed ITS' 2007 repair tickets to determine whether out-of-service conditions were cleared within 24 hours and, if not, whether the proper rebate was automatically applied to the affected customer's account. In sampling ITS' records, staff found that 33 rebates were not credited to customers that experienced out-of-service conditions for more than 24 hours.

On December 19, 2008, staff requested ITS to investigate the missed rebates. ITS found that the apparent missed rebates were due to a peculiarity of the billing system implemented in April 2006. ITS stated that it hired a new clerk in September 2008 and during her training, noticed that the "auto date/time" field would fluctuate based on how the ticket was closed-out. For example, saving the cleared ticket file without exiting the file, and then saving again, or closing, could cause the date/time to change for that ticket. When that happened, it gave a false read on the actual ticket closing time. ITS reported that it has changed its procedures to assure that the system properly records the closing of the repair tickets.

In a thorough review of its records, ITS found that a total of 57 customers were due a credit for being out-of-service for more than 24 hours during the period March 1, 2006, to September 30, 2008. ITS stated that it would credit a total of \$327.88 in out-of-service rebates to customers' accounts for that period. Two customers are no longer with the company. One of those customers has an outstanding bill with the company and ITS applied the credit to the balance due. The credit due to the other former customer is \$0.63.

The Commission has jurisdiction over this matter pursuant to Sections 364.01, 364.285, and 364.604, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

Discussion of Issues

Issue 1: Should the Commission approve ITS Telecommunications Systems, Inc.'s actions wherein the company issued a refund to the affected customers in the March and April 2009 billing cycles, for failing to issue automatic rebates to customers who experienced out-of-service conditions for more than 24 hours, as required by Rule 25-4.110(6), F.A.C., from March 2006 through September 2008?

Recommendation: Yes, the Commission should approve ITS' refund actions. (M. Watts/P. Buys/Livingston/Morrow)

Staff Analysis: Rule 25-4.110(6), F.A.C., states the following:

Each company shall make appropriate adjustments or refunds where the subscriber's service is interrupted by other than the subscriber's negligent or willful act, and remains out of order in excess of 24 hours after the subscriber notifies the company of the interruption. The refund to the subscriber shall be the pro rata part of the month's charge for the period of days and that portion of the service and facilities rendered useless or inoperative; except that the refund shall not be applicable for the time that the company stands ready to repair the service and the subscriber does not provide access to the company for such restoration work. The refund may be accomplished by a credit on a subsequent bill for telephone service.

ITS issued credits on the customers' bills in the March and April 2009 billing cycles. ITS reported to staff the number of customers, the amount to be refunded, and the amount that was unrefundable in its January 30, 2009 letter to staff. For the two customers entitled to a refund, but no longer in its system, ITS stated it would apply one customer's credit to his past-due balance, and would not mail a refund check to the last known billing address of the second because the amount was less than \$1.00.¹ ITS confirmed via e-mail on April 22, 2009, that the refund proposal proceeded as anticipated in its January 30, 2009 letter.

Typically, staff works with the regulated entity to define and calculate interest applicability for refunded principal amounts. In this case, ITS has already implemented the refunds. Because the total interest is \$19.93, staff believes that it is not practical for ITS to program its systems to implement the payment of interest for the small amount of interest staff has determined. Because the interest amounts are small, and the costs to implement payment appear high, staff believes that interest payments should not be required, given that the refunds have already been completed. Rule 25-4.114, F.A.C., Refunds, provides the Commission flexibility to order refunds with or without interest.

¹ Rule 25-4.114(5), F.A.C., Refunds, states in part, "For customers entitled to a refund but no longer on the system, the company shall mail a refund check to the last known billing address except that no refund for less than \$1.00 will be made to these customers."

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Accordingly, staff recommends that the Commission approve ITS Telecommunications Systems, Inc.'s actions wherein the company issued a refund to the affected customers in the March and April 2009 billing cycles, for failing to issue automatic rebates to customers who experienced out-of-service conditions for more than 24 hours, as required by Rule 25-4.110(6), F.A.C., from March 2006 through September 2008.

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Issue 2: Should this docket be closed?

Recommendation: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order. If no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order, this docket should be closed upon issuance of the Consummating Order. **(Morrow)**

Staff Analysis: The Order issued from this recommendation will be a proposed agency action. Thus, the Order will become final and effective upon issuance of the Consummating Order. If no person whose substantial interests are affected timely files a protest within 21 days of issuance of this Order, this docket should be closed upon issuance of the Consummating Order.