

State of 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-

**DATE:** March 25, 2010

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Regulatory Analysis (M. Watts, Beard)  
Division of Economic Regulation (Buys)  
Office of the General Counsel (Brooks)

*Handwritten signatures and initials:*  
MWA CBB  
ALM JB  
MB

**RE:** Docket No. 100112-TX – Investigation and determination of appropriate method for refunding apparent overcharges by EveryCall Communications, Inc. due to overbilling on local number portability fees.

**AGENDA:** 04/06/10 – 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\RAD\WP\100112.RCM.DOC

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COMMISSION  
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### Case Background

The Florida Public Service Commission (the Commission) issued competitive local exchange telecommunications company (CLEC) certificate number 8407 to EveryCall Communications, Inc. (EveryCall) on December 10, 2003.

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As part of the Commission's review of EveryCall's application for eligible telecommunications carrier (ETC) status<sup>1</sup> for providing discounted service under the Lifeline Assistance Program (Lifeline), staff issued data requests to the company requesting a sample customer bill.

On April 15, 2009, EveryCall provided a copy of a sample Lifeline customer bill. On May 5, 2009, another data request was sent to EveryCall requesting additional information about the charge labeled "LNP" on the bill. EveryCall responded on July 1, 2009.

While reviewing the data, staff saw that EveryCall was charging the Local Number Portability (LNP) fee to Lifeline customers. Between April 2008, and October 2009, 1,500 Lifeline customers were apparently charged between \$0.35 and \$1.40 a month for LNP.

This recommendation addresses EveryCall's refund of the apparent overcharges. The Commission has jurisdiction over this matter pursuant to Sections 364.02, 364.04, and 364.285, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

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<sup>1</sup> Docket No. 090026-TX – Application for designation as an Eligible Telecommunications Carrier (ETC) by Everycall Communications, Inc.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve EveryCall Communications, Inc.'s refund of \$1,567.46, plus interest in the amount of \$5.06, for a total of \$1,572.52, to the affected customers during the June 2010 billing cycle; require the company to remit any unrefundable monies to the Commission by October 29, 2010, for deposit in the General Revenue Fund; and require the company to submit a refund report by October 29, 2010, to the Commission stating, (1) how much was refunded to its customers, (2) the total number of customers receiving refunds, and (3) the amount of money determined to be unrefundable?

**Recommendation:** Yes, the Commission should approve EveryCall's refund. As required by Rule 25-4.114, F.A.C., for those customers still on the system, a credit shall be made on the bill. 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. At the end of the refund period, any amount not refunded, including interest, should be remitted to the Commission for deposit in the General Revenue Fund. (M. Watts/Buys/Brooks)

**Staff Analysis:** The section of the Code of Federal Regulations (CFR) governing the provision of Lifeline service to eligible customers, CFR 53.22(a)(1)(i)(C), states "Lifeline Assistance Program customers shall not receive the monthly number-portability charge."

Upon determining that EveryCall had charged Lifeline customers the LNP fee, staff requested on January 6, 2010, that the company provide a breakdown of its taxes and fees. The company responded on January 14, 2010, with a spreadsheet showing the customer's name, address, Lifeline qualification determinant, amount apparently overcharged for the LNP fee, and length of time the amount was charged.

After discussions with staff, EveryCall agreed to issue a refund of \$1,567.46, plus interest in the amount of \$5.06, for a total of \$1,572.52, to the affected customers during its June 2010 billing cycle. Staff calculated the interest amount using the overcharges that occurred over the 19-month period from April 2008 to October 2009, with the expectation the company will refund the entire amount in June 2010. Staff used the average 30-day commercial paper rate for each month through February 2010, and the last available monthly interest rate of 0.2050% for months beyond February 2010. This calculation is consistent with the requirements of Rule 25-4.114, F.A.C.

Accordingly, staff recommends that the Commission approve EveryCall Communications, Inc.'s refund of \$1,567.46, plus interest in the amount of \$5.06, for a total of \$1,572.52, to the affected customers during the June 2010 billing cycle; require the company to remit any unrefundable monies to the Commission by October 29, 2010, for deposit in the General Revenue Fund; and require the company to submit a refund report by October 29, 2010, to the Commission stating, (1) how much was refunded to its customers, (2) the total number of customers receiving refunds, and (3) the amount of money determined to be unrefundable.

**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. The company should submit its final report, identified by docket number, by October 29, 2010. If any monies are not refunded, EveryCall should submit payment of these monies to the Commission at the time it submits its final report, and the Commission shall deposit these monies in the General Revenue Fund. Upon receipt of the final report, this docket should be closed administratively if no timely protest has been filed. **(Brooks)**

**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. The company should submit its final report, identified by docket number, by October 29, 2010. If any monies are not refunded, EveryCall should submit payment of these monies to the Commission at the time it submits its final report, and the Commission shall deposit these monies in the General Revenue Fund. Upon receipt of the final report, this docket should be closed administratively if no timely protest has been filed.