**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-

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**DATE:** August 25, 2005

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Competitive Markets & Enforcement (R. Kennedy)
Division of Economic Regulation (Lester)
Office of the General Counsel (Scott)

**RE:** Docket No. 050484-TI – Investigation and determination of appropriate method for refunding overcharges for 0+ calls made from pay telephones by Network Communications International Corp. d/b/a Mundo Telecom d/b/a 1800Call4Less.

**AGENDA:** 09/06/05 – 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\CMP\WP\050484.RCM.DOC

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## Case Background

Network Communications International Corp. d/b/a Mundo Telecom d/b/a 1800Call4Less (NCIC) is registered as an intrastate interexchange telecommunications company (IXC) with the Florida Public Service Commission (Commission). Among other services, NCIC provides operator services for approximately 24 pay telephone service providers that operate in Florida. The company reported $1,723,267.30 gross operating revenue in Florida on its 2004 Regulatory Assessment Fee Return.

Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements, sets maximum rates that an operator services provider can charge for intrastate 0+ calls made from a pay telephone station. Based on rates NCIC billed the Commission for intrastate 0+ test calls performed by staff, and input from other telecommunications providers, staff determined that the company's billed rates exceeded the maximum rates established by Rule 25-24.630, Florida Administrative Code.

During exchanges with the company, staff learned that NCIC assessed a non-subscriber surcharge of up to $2.50 on a per-call basis on intrastate 0+ calls. The non-subscriber surcharge caused NCIC's billed rates to exceed the established rate caps. A non-subscriber surcharge is a charge that a company bills to any customer that is not presubscribed for the company's services, such as 1+ toll service.

NCIC's tariff did identify the non-subscriber surcharge, however, Rule 25-24.630, Florida Administrative Code, precludes application of any surcharge, tariffed or not, that causes the charges billed to a customer to exceed the codified rate caps. NCIC has amended its tariff to eliminate the non-subscriber surcharge.

Staff opened this docket on July 13, 2005, to investigate and determine an appropriate method for refunding these overcharges. The purpose of this recommendation is to address the company's proposal for disposing of the monies collected as a result of overcharging customers for intrastate 0+ calls made from pay telephone stations.

The Commission has jurisdiction over this matter pursuant to Section 364.3376, Florida Statutes. Accordingly, staff believes the following recommendations are appropriate.

## Discussion of Issues

**Issue 1**: Should the Commission accept NCIC's offer to contribute $35,000, in three installments of $15,000, $10,000 and $10,000, to the General Revenue Fund as a resolution for charging end users a non-subscriber surcharge on 0+ intrastate calls made from pay telephones in excess of the rate caps provided in Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements?

**Recommendation**: Yes. (R. Kennedy, Lester, Scott)

**Staff Analysis**: Rule 25-24.630, Florida Administrative Code, provides in part:

> (1) Services charged and billed to any end user by an operator services provider for an intrastate 0+ or 0- call made from a pay telephone or in a call aggregator context shall not exceed a rate of $.30 per minute plus the applicable charges for the following types of telephone calls:
> (a) A person-to-person call – a charge of $3.25;
> (b) A call that is not a person-to-person call – a charge of $1.75.
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> (7) An operator services provider shall not:
> (d) Bill or collect a surcharge levied by any entity, either directly or through its billing agent, except Commission-approved charges for pay telephone providers.

By charging a non-subscriber surcharge of up to $2.50 for 0+ calls made from pay telephones, NCIC was billing customers in apparent violation of Rule 25-24.630, Florida Administrative Code. To resolve this matter, NCIC has adjusted its rates to eliminate the non-subscriber surcharge on 0+ calls made from pay telephones and has amended its tariff to eliminate the surcharge.

NCIC has proposed to make payment of $35,000, representing an estimated and stipulated amount, into the General Revenue Fund of the state of Florida. NCIC proposes to make the $35,000 payment in three installments payable as follows: $15,000 payable thirty (30) days after the Commission's order approving the refund plan; $10,000 payable thirty (30) days thereafter; and $10,000 payable thirty (30) days thereafter. NCIC offers the payment plan because a lump sum payment of $35,000 would stress the company's finances. NCIC claims that approximately half of the revenues collected for the overcharges were paid to pay telephone companies.

NCIC believes this is the only practical and effective means to resolve the overcharge issue. NCIC claims that it has no name or billing information for the affected customers and would have to rely on the billing local exchange companies and other third party billing entities to attempt to effectuate refunds. NCIC further claims that changes in serving local exchange companies, credit card providers, billed-to phone numbers and mailing addresses over the time frame involved will result in a substantial number of failed refund attempts even if such an effort were undertaken. In addition, the company estimates that the effort would cost it an additional fifty percent of the amount to be refunded.

The Commission has accepted a proposed refund process that is essentially identical to that offered by NCIC, with exception of the total revenues involved due to the difference in business volume. In Docket No. 010364-TI, In Re: Investigation and determination of appropriate method for refunding non-subscriber surcharge, plus interest, applied to intrastate 0+ calls made from pay telephones by AT&T Communications of the Southern States, Inc. d/b/a Connect 'N Save and d/b/a Lucky Dog Phone Co. and d/b/a ACC Business, the Commission approved AT&T's proposal to contribute $50,000 to the General Revenue Fund to settle apparent overcharges of a non-subscriber surcharge on intrastate 0+ calls made from pay telephones.

Accordingly, staff recommends that the Commission accept NCIC's offer to contribute $35,000, in three installments of $15,000, $10,000 and $10,000, to the General Revenue Fund as a resolution for charging end users a non-subscriber surcharge on 0+ intrastate calls made from pay telephones in excess of the rate caps provided in Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements

**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 first payment of $15,000 within 30 days after issuance of the Proposed Agency Action (PAA) Order; submit the second payment of $10,000 within 60 days after issuance of the PAA Order; and submit its final payment of $10,000 within 90 days after issuance of the PAA Order. All payments should be made payable to the Florida Public Service Commission for deposit in the state of Florida General Revenue Fund. The company should submit its final report to the Commission within 30 days of making its last payment to the Commission. Upon receipt of all the payments and the final report, this docket should be closed administratively. **(Scott)**

**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 first payment of $15,000 within 30 days after issuance of the Proposed Agency Action (PAA) Order; submit the second payment of $10,000 within 60 days after issuance of the PAA Order; and submit its final payment of $10,000 within 90 days after issuance of the PAA Order. All payments should be made payable to the Florida Public Service Commission for deposit in the state of Florida General Revenue Fund. The company should submit its final report to the Commission within 30 days of making its last payment to the Commission. Upon receipt of all the payments and the final report, this docket should be closed administratively.