



Public Service Commission

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RECORDS AND REPORTING

DATE: FEBRUARY 3, 2000

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

FROM: DIVISION OF COMMUNICATIONS (BIEGALSKI) *KB*
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (D. DRAPER) *DD*
DIVISION OF LEGAL SERVICES (CALDWELL) *awc JK*

RE: DOCKET NO. 000021-TI - INVESTIGATION AND DETERMINATION OF APPROPRIATE METHOD FOR REFUNDING INTEREST AND OVERCHARGES ON INTRASTATE 0+ CALLS MADE FROM PAY TELEPHONES AND IN A CALL AGGREGATOR CONTEXT BY FOXTEL, INC.

AGENDA: 02/15/00 - REGULAR AGENDA - ISSUE 1 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMU\WP\000021.RCM

CASE BACKGROUND

- February 7, 1998 - FoxTel, Inc. (FoxTel) was issued Certificate Number 5318 to operate as an interexchange telecommunications company.
- February 1, 1999 - Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements, was amended to cap rates for intrastate 0+ and 0- calls from pay telephones or a call aggregator context to \$.30 per minute plus \$3.25 for a person-to-person call or \$1.75 for a non person-to-person call.
- August 2, 1999 - Staff reviewed FoxTel's tariff for compliance with Rule 25-24.630, Florida Administrative Code, and found that FoxTel's tariffed rates appeared to exceed the rate cap. Staff sent FoxTel a certified letter and requested additional information by August 17, 1999.

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- August 6, 1999 - FoxTel signed for and received the certified letter.
- August 17, 1999 - FoxTel requested an extension until August 25, 1999, to file a response to staff's information request.
- August 25, 1999 - FoxTel responded to staff's letter stating that it failed to timely revise its tariff and, therefore, it appears that it overcharged approximately 1559 customers in the amount of \$3,292.70.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order FoxTel, Inc. to refund \$3,292.70, plus interest of \$187.89, for a total of \$3,480.59 for overcharging end users on intrastate 0+ calls made from pay telephones and in a call aggregator context from February 1, 1999, through August 24, 1999?

RECOMMENDATION: Yes. The Commission should order FoxTel to refund \$3,292.70, plus interest of \$187.89, for a total of \$3,480.59 for overcharging end users on intrastate 0+ calls made from pay telephones and in a call aggregator context from February 1, 1999, through August 24, 1999. The refunds should be made through credits to customers' local exchange telephone bills between April 2000 and May 2000. At the end of the refund period, any unrefunded amount, including interest, should be remitted to the Commission by June 10, 2000, and forwarded to the Comptroller for deposit in the General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. FoxTel should submit a final report as required by Rule 25-4.114, Florida Administrative Code, Refunds, by June 10, 2000.
(Biegalski)

STAFF ANALYSIS: Staff compared FoxTel's tariff for operator service rates to the rate cap established in Rule 25-24.630, F.A.C. Based on the comparison, it appeared FoxTel's tariffed rate for the surcharge element exceeded the rate cap. On August 2, 1999, staff wrote FoxTel and advised the company of the discrepancy and requested information by August 17, 1999. Immediately upon receipt of staff's request, a FoxTel representative contacted staff and requested an extension to respond to staff's information request

until August 25, 1999. On August 25, 1999, staff received a response from FoxTel stating that it had not made the necessary tariff revisions to change its operator service provider surcharge rates for person-to-person calls from \$4.90 and non person-to-person calls from \$2.25 to \$3.25 and \$1.75, respectively, in order to comply with the new rate caps and that it would be corrected immediately.

The company's tariff, which became effective February 7, 1998, not only exceeded the rate cap for the specific person-to-person and non person-to-person surcharge, but also included an operator dialed surcharge that was not provided for in the current rate cap rule. The company revised its person-to-person and non person-to-person surcharge and removed the operator dialed surcharge.

In its response, FoxTel states that although it had not revised its tariff in a timely manner to comply with the new rate caps, not all customers were overcharged. FoxTel states that although its person-to-person and non person-to-person surcharges were in excess of the rate cap, its per minute rates were below the capped rate, and therefore, many customers were charged less for the total call than would have been the case had both elements been rated at the respective capped rate. FoxTel states that although it urges the Commission not to require refunds in situations where the customer paid less for the total call than would have been the case under the rate caps, it would issue refunds upon Commission Order. In its response, FoxTel provided detailed information in response to staff's letter and stated that 1,559 customers were overcharged a total of \$3,292.70. FoxTel informed staff that this calculation was based on the difference between the surcharge assessed and the surcharge element of the rate cap implemented for the appropriate type of call.

Staff believes that the rate caps implemented on February 1, 1998, are the maximum the company may tariff for those type of calls. FoxTel's tariffed per minute rate for person-to-person and non person-to-person calls on file with the Commission are below the parameters set by the Rule. The surcharge for these types of calls, however, is above the cap, and therefore, the surcharge imposed in excess of the rate cap needs to be refunded. Staff believes it was a decision made by the company to charge a per minute rate that was less than allowed by the Rule, and therefore, staff does not believe that it would be appropriate to refund the difference in the total cost of the call. Therefore, the refund calculation provided by FoxTel is accurate and the appropriate amount to be refunded to consumers.

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Based on the foregoing, staff recommends that the Commission accept Foxtel's refund calculation pursuant to Rule 25-4.114, F.A.C. Staff believes the amount of refunds should be \$3,480.59, including interest of \$187.89. Foxtel has agreed that if the Commission should order refunds, it will credit end users' bills for the overcharge plus interest. The credit will appear on the local telephone company statement between April 1 and May 31, 2000. Staff recommends that any unrefunded monies, including interest due, should be remitted to the Commission and deposited in the General Revenue Fund, pursuant to Chapter 364.285(1), Florida Statutes. In addition, staff recommends that Foxtel should be required to file a report consistent with Rule 25-4.114, Florida Administrative Code, Refunds, with the Commission once all monies have been refunded.

ISSUE 2: Should Foxtel, Inc. be required to show cause why it should not pay a fine for overbilling of calls in excess of the rate cap established in Rule 25-24.630, F.A.C., Rate and Billing Requirements?

RECOMMENDATION: No. (Biegalski)

STAFF ANALYSIS: By Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or Order of the Commission, or any provision of Chapter 364. Staff does not believe that Foxtel's conduct rises to the level that warrants an order to show cause.

Foxtel corrected the problem and cooperated fully with staff during the investigation. Moreover, Foxtel has agreed to refund those overcharged customers, including interest if so ordered by the Commission.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: No. If no person, whose interests are substantially affected by the proposed action files a protest of the Commission's decision on Issue 1 within the 21 day protest period, this docket should 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 may be closed administratively. **(Caldwell)**

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, this docket should 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 may be closed administratively.