



Public Service Commission

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RECORDS AND REPORTING

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RECEIVED-FPSC

DATE: JUNE 8, 2000

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

FROM: DIVISION OF COMPETITIVE SERVICES (BIEGALSKI) *KB*
 DIVISION OF ECONOMIC REGULATION (D. DRAPER)
 DIVISION OF LEGAL SERVICES (FORDHAM) *c.f.f. b/c*

RE: DOCKET NO. 000020-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 ASC TELECOM, INC. D/B/A ALTERNATEL.

AGENDA: 06/20/00 - REGULAR AGENDA - ISSUE 1 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\000020.RCM

CASE BACKGROUND

- April 20, 1996 - ASC Telecom, Inc. d/b/a AlternaTel (ASC) was issued certificate number 4398 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.
- July 29, 1999 - Staff reviewed ASC's tariff for compliance with Rule 25-24.630, Florida Administrative Code, and found that ASC's tariffed rates appeared to exceed the rate cap.

DOCUMENT NUMBER-DATE

06977 JUN-88

FPSC-RECORDS/REPORTING

DOCKET NO. 000020-11f
DATE: June 8, 2000

- July 29, 1999 - Staff sent ASC a certified letter and requested additional information by August 16, 1999.
- September 1, 1999 - Staff faxed a copy of the letter to ASC. The company stated it did not receive staff's initial letter. A response was requested by September 15, 1999.
- September 15, 1999 - ASC requested an extension until October 11, 1999 to file a response to staff's information request.
- October 11, 1999 - ASC faxed staff a partial response and stated that a complete response would be sent by October 15, 1999.
- October 15, 1999 - ASC proposed to offer a refund to the customers who had been overcharged. ASC's response states that it overcharged 10,263 customers by an amount of \$11,802.45.
- March 2000 - Upon review of a billing received as a result of a payphone evaluation, staff determined that ASC was also charging a set use fee in the amount of \$.25 in addition to the rate cap elements.
- May 17, 2000 - ASC states that its calculations need to be revised to reflect 19,674 calls overcharged a total of \$15,964.20. Of this amount 12273 calls were overcharged an amount of \$14,113.95 for the operator dialed surcharge and 7,401 calls were overcharged an amount of \$1,850.25 for the set use fee.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept ASC Telecom, Inc. d/b/a AlternaTel's offer of refund and refund calculation of \$15,964.20, plus interest of \$1,244.43, for a total of \$17,208.63, for overcharging end users on intrastate 0+ calls made from pay telephones and in a call aggregator context from February 1, 1999, through September 19, 1999?

RECOMMENDATION: Yes. The Commission should accept ASC's refund calculation of \$15,964.20, adding interest of \$1,244.43, for a total of \$17,208.63, and proposal to credit customer's local exchange telephone bills beginning August 1, 2000, and ending September 30, 2000, for overcharging end users on intrastate 0+ calls made from pay telephones and in a call aggregator context from February 1, 1999, through September 19, 1999. At the end of the refund period, any unrefunded amount, including interest, should be remitted to the Commission by October 10, 2000, and forwarded to the Comptroller for deposit in the General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. ASC should submit a final report as required by Rule 25-4.114, Florida Administrative Code, Refunds, by October 10, 2000. If the company fails to issue the refunds in accordance with the terms of the Commission's Order, the company's certificate should be canceled, and this docket should be closed. **(Biegalski)**

STAFF ANALYSIS: Staff compared ASC's tariff for operator service rates to the rate cap established in Rule 25-24.630, Florida Administrative Code. Based on the comparison, it appeared ASC was charging an operator dialed surcharge in addition to the tariffed rates for the surcharge element on person-to-person and non person-to-person calls. Therefore, it appeared as if ASC was exceeding the rate cap. On July 29, 1999, staff wrote ASC and advised of the discrepancy and requested information by August 16, 1999. Staff contacted ASC and was informed that the initial letter was not received. Staff faxed ASC a copy of the letter and requested a response by September 15, 1999. On September 15, 1999, ASC requested an extension until October 11, 1999, to file a response to staff's information request. On October 11, 1999, ASC faxed staff a partial response and stated that a complete response would be sent by October 15, 1999. In its response, the company stated that the operator dialed surcharge would be removed immediately.

The company's tariff, which became effective August 15, 1998, included an operator dialed surcharge of \$1.15 that was not provided for in the current rate cap rule that was charged in

addition to the per minute rate and the person-to-person or non person-to-person surcharge. On October 13, 1999, the company removed the operator dialed surcharge from its tariff. However, the company ceased billing customers for the operator dialed surcharge on September 20, 1999. On October 15, 1999, ASC provided detailed information in response to staff's letter stating that apparently 10,263 calls were overcharged. While reviewing a bill received as a result of a pay telephone evaluation, staff determined that ASC was also charging a set use fee of \$.25. In addition, while compiling the data necessary in order to issue refunds to customers, ASC determined that its refund calculation needed to be revised to include this additional charge. In its revised calculation, ASC states that a total of 19,674 calls were overcharged a total of \$15,964.20. Of this amount, 12,273 calls were overcharged a total of \$14,113.95 for the operator dialed surcharge and 7,401 calls were overcharged a total of \$1,850.25 for the set use fee.

Based on the foregoing, staff recommends that the Commission accept ASC's proposed refund calculations, including interest as required by Rule 25-4.114, Florida Administrative Code. Staff believes the amount of refunds should be \$17,208.63, including interest of \$1,244.43. ASC has agreed to credit end users' local exchange telephone bills for the overcharge plus interest between August 1 and September 30, 2000. Staff recommends that any unrefunded monies, including interest due, should be remitted to the Commission by October 10, 2000, and deposited in the General Revenue Fund, pursuant to Chapter 364.285(1), Florida Statutes. In addition, ASC should be required to file a report consistent with Rule 25-4.114, Florida Administrative Code, Refunds, with the Commission by October 10, 2000. If the company fails to issue the refunds in accordance with the terms of the Commission's Order, the company's certificate should be canceled, and this docket should be closed.

ISSUE 2: Should ASC Telecom, Inc. d/b/a AlternaTel 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, Florida Administrative Code, Rate and Billing Requirements?

RECOMMENDATION: No. (Biegalski)

DOCKET NO. 000020-rI
DATE: June 8, 2000

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 ASC's conduct rises to the level that warrants an order to show cause.

ASC corrected the problem and cooperated fully with staff during the investigation. Moreover, ASC has agreed to refund those overcharged customers, including interest.

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. **(Fordham)**

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.