

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 000021-TI
ORDER NO. PSC-00-0435-PAA-TI
ISSUED: March 2, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER REQUIRING FOXTEL, INC. TO REFUND OVERCHARGES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On 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.

Our staff compared FoxTel'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 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.

DOCUMENT NUMBER-DATE

02801 MAR-28

FPSC-RECORDS/REPORTING

Staff received a timely 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 asserts 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 argues 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. FoxTel also 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.

We believe 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 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. We believe that it was a decision made by the company to charge a per minute rate that was less than allowed by the Rule, and therefore, it would be appropriate to refund the difference in the total cost of the call. Therefore, we find that 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, we accept FoxTel's refund calculation pursuant to Rule 25-4.114, Florida Administrative Code. We find the amount of refunds should be \$3,480.59, including interest of \$187.89. FoxTel has agreed that if we order refunds, it will credit end users' bills for the overcharge plus interest. The credit shall appear on the local telephone company statement between April 1 and May 31, 2000. We further find that any unrefunded monies, including interest due, shall be remitted to us for deposit in the General Revenue Fund, pursuant to Chapter 364.285(1), Florida Statutes. In addition, FoxTel shall file a report consistent with Rule 25-4.114, Florida Administrative Code, once all monies have been refunded.

By Section 364.285, Florida Statutes, this 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. FoxTel corrected the problem and cooperated fully with our staff during the investigation. Moreover, FoxTel has agreed to refund those overcharged customers, including interest if so ordered. Upon consideration, we find that FoxTel's conduct does not rise to the level that warrants an order to show cause.

It is therefore

ORDERED that FoxTel, Inc. shall 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 shall be made through credits to customers' local exchange telephone bills between April 2000 and May 2000. It is further


ORDERED that at the end of the refund period, any unrefunded amount, including interest, shall be remitted to this 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, Inc. shall submit a final report as required by Rule 25-4.114, Florida Administrative Code, Refunds, by June 10, 2000. It is further

ORDERED that if no person, whose interests are substantially affected by the proposed action files a protest within the 21 day protest period, this docket should remain open pending the

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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.

By ORDER of the Florida Public Service Commission this 2nd day of March, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on March 23, 2000.

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In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.