

-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of the Formal Complaint of: )  
RUTH (JOHN) FINDLAY )  
Complainants, )  
vs. )  
TOUCH AMERICA, INC. )  
Respondent. )

DOCKET NO. 02-2310-01  
REPORT AND ORDER

ISSUED: March 21, 2003

By The Commission:

This matter came on for hearing on March 19, 2003, pursuant to an Amended Notice of Hearing issued February 11, 2003. Complainant Ruth Findlay appeared, as did Wesley Huntsman for the Division of Public Utilities. Respondent Touch America, Inc. did not appear.

The Administrative Law Judge, being fully advised, enters the following proposed findings, conclusions, and order.

The facts are not in dispute. This complaint concerns an operated assisted intrastate toll call made by Complainant's mother, who is a long-term resident at an assisted living center. The call was from Draper, Utah, to Logan, Utah. The charge for the six minute call, including taxes, was \$28.24. Complainant's mother reached Touch America by dialing "0", and Touch America billed the call to Complainant's residence without notice to or consent from Complainant or anyone at Complainant's residence. Complainant paid the bill but questions the ability of Respondent to make such charges, and seeks a refund.

In its written response, Touch America stated that it is its policy to obtain live verbal agreement to accept charges for a third party call. Touch America, however, does not require such approval when the call originates from a medical facility phone line. Since this call originated from what Touch America defined as a medical facility phone line, Touch America admitted that it did not obtain agreement from Complainant to accept the charges.

*Utah Code Annotated* §54-8b-2(11) states:

"Operator Assisted Services" means services which assist callers in the placement or charging of a telephone call, either through live intervention or automated intervention.

Touch America was an provider of Operator Assisted Services for this call. *Utah Code Annotated* §54-8b-13 requires this Commission to establish rules governing Operator Assisted Services. The Commission's rule R746-346-4 sets forth the requirements a provider of operator assisted services must meet before an operator assisted call is completed as follows:

The provider of operator services shall:

- A. identify itself to the customer upon answering calls;
- B. identify itself to the billed party if the billed party is different from the caller;
- C. quote rate information at the caller's request, without charge, 24 hours a day, seven days a week;
- D. permit the caller to terminate the call at no charge prior to completion of the call by the operator service provider.

Subsection "B" of this rule requires that the party to be billed for an operator assisted call be notified of the call, and the company providing the operator assistance, prior to completion of the call. Touch America did not comply with that provision.

A refund of all charges for the subject call is appropriate in this matter.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Touch America's default, for failure to appear, is entered.
2. Touch America shall refund, within 30 days of the date of this order, \$28.24 to Complainant for all charges and taxes associated with the subject operator assisted call.
3. An aggrieved party may file a written petition for review within 20 days of the date of this order. Failure to timely file a petition for review will forfeit the right to appeal. DATED at Salt Lake City, Utah, this 21<sup>st</sup> day of March, 2003.

/s/ Douglas C. Tingey  
Administrative Law Judge

Approved and Confirmed this 21<sup>st</sup> day of March, 2003, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary

G#33130