

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for waiver of) DOCKET NO. 961291-TC
Rules 25-24.515(15) and 25-) ORDER NO. PSC-97-0260-FOF-TC
24.515(9), F.A.C., by WORLDCOM,) ISSUED: March 11, 1997
INC. d/b/a LDDS WORLDCOM.)
_____)

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING WAIVER PETITION

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.

I. CASE BACKGROUND

WORLDCOM, INC d/b/a LDDS WORLDCOM (LDDS WorldCom) holds Pay Telephone Certificate No. 5033, with an effective regulation date of January 7, 1997. LDDS WorldCom operates pay telephones in various confinement facilities throughout Florida.

LDDS WorldCom filed a petition for two waivers of our rules and orders: petition for waiver of Rule 25-24.515(15) and Rule 25-24.515(9). Rule 25-24.515(15) pertains to those rules and policies currently prohibiting LDDS WorldCom from providing 0+ local and 0+ intraLATA calls from store-and-forward pay telephones located in confinement facilities. Rule 25-24.515(9) pertains to those rules and policies currently prohibiting LDDS WorldCom from installing concentrators to allow up to three instruments per access line, or the equivalent thereof, for its pay telephones located in confinement facilities. These petitions are more properly petitions for exemption authorized by Rule 25-24.505(3), Florida Administrative Code.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

The waiver petition was filed on October 28, 1996. The Notice of Petition for these waivers was submitted to the Secretary of State on December 4, 1996 for publication in the Florida Administrative Weekly. No comments were submitted during the comment period, which ended January 13, 1997. The statutory deadline for our decision regarding this petition was January 27, 1997.

The staff recommendation regarding this petition was filed for the January 21, 1997, Agenda to meet the statutory deadline. However, the recommendation did not fully address the request for waiver of both rules. Therefore, staff requested a deferral. Prior to requesting a deferral, concurrence of this action was obtained from LDDS WorldCom.

II. HISTORY OF COMMISSION RULES AND POLICIES

A. PAY TELEPHONE LINE CONCENTRATION

By Order No. 14529, issued July 1, 1985, we required that only one pay telephone instrument be installed per access line. Local exchange company (LEC) tariffs generally reflect this requirement and contain language requiring pay telephone providers to order a separate public telephone access line for each telephone instrument installed. In addition, the provisions of Rule 25-24.515(9), Florida Administrative Code, require each telephone instrument to be connected as provided in the LEC's access tariff.

B. 0+ LOCAL AND INTRALATA TRAFFIC FROM PAY TELEPHONE STATIONS

We have already issued Order No. PSC-96-0884-FOF-TC implementing 1+ intraLATA competition via presubscription for non-LEC pay telephone providers and call aggregators. We have also granted exemptions to allow other pay telephone providers to handle 0+ local and 0+ intraLATA traffic in confinement facilities.

LDDS WorldCom's petition states that "The granting of this waiver is appropriate because it eliminates an inconsistent result that is inappropriate under Florida law." With respect to 0+ local calling beginning January 1, 1996, ALECs have been able to handle such calls. With respect to 0+ intraLATA calling such calling is also subject to handling by ALECs. The incumbent LECs no longer have a monopoly for these services, and a monopoly for these calls at competitive pay telephones does not seem appropriate when technology will permit competition.

III. CONCLUSION

A. PAY TELEPHONE LINE CONCENTRATION

We believe granting a waiver to LDDS Worldcom is appropriate for the following reasons. Confinement facilities have their own emergency response systems in place, and Rule 25-24.515(15), Florida Administrative Code, exempts pay telephones located in confinement facilities from the requirement to provide access to 911. For these reasons, the concern with inmates getting a busy signal when they try to reach emergency services is moot.

LDDS WorldCom will be able to more cost effectively service a wider range of the inmate population within a specific confinement facility. Inmate access to telephone service will be improved since more instruments will be placed throughout the facility. Concentrator equipment will allow access by all stations within the concentrated block of instruments to a series of access lines on a first-available line basis, thereby improving the statistical probability of connection to an outside line. Though more instruments will be available for use throughout the facility, there will be no change in the fact that only one instrument at a time can be in use on a single access line. When all access lines are in use, all non-using instruments will receive a busy signal until an access line becomes available.

Also, generated revenues for the provider and the facility will be improved. Experience with line concentration in confinement facilities has shown no adverse service effects. LDDS WorldCom will not use concentrators anywhere other than confinement facilities.

Finally, our approval of LDDS WorldCom's petition is consistent with legislative mandates to avoid unnecessary regulatory constraints and to eliminate rules that delay or impair the transition to competition (Sections 364.01(4)(e) and 364.01(4)(f), Florida Statutes). In Order No. PSC-96-1157-FOF-TC, issued September 17, 1996, we granted a waiver permitting ATN, Inc. to provide up to a three to one line concentration within inmate facilities.

We believe that a three to one ratio of pay telephones to access lines will allow adequate access to telephone service by the inmate population. However, if the administrators of a correctional facility are not satisfied with the level of access, we believe that LDDS WorldCom will be responsive to the facility as failure to do so might jeopardize its contract for pay telephone service.

Upon consideration, we grant LDDS WorldCom's petition for waiver of Rule 25-24.515(9), Florida Administrative Code, and Order No. 14529 to allow line concentration of up to three pay telephone instruments per access line, or the equivalent thereof, for its pay telephones located in confinement facilities.

B. 0+ LOCAL AND INTRALATA TRAFFIC FROM PAY TELEPHONE STATIONS

There seems to be no compelling reason to continue the prohibition against pay telephone providers in confinement facilities handling local and intraLATA calls on a collect basis since Florida Statutes have been amended to permit competition for local telephone service, and we have been instructed to encourage such competition. Section 364.01(4)(e), Florida Statutes, instructs us to "encourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints." Section 364.01(4)(f), Florida Statutes, instructs us "eliminate any rules and/or regulations which will delay or impair the transition to competition."

Allowing LDDS WorldCom to handle local and intraLATA 0+ calls from confinement facilities will facilitate competition, as the company will be able to more effectively compete for those sites where the traffic is predominately local and intraLATA.

Upon consideration, we grant LDDS Worldcom a waiver of Rule 25-24.515(15), Florida Administrative Code, currently prohibiting it from providing 0+ local and 0+ intraLATA calls from store-and-forward pay telephone located in confinement facilities.

Further, this docket shall be closed unless a person whose substantial interests are affected by the our decision files a protest within 21 days of the issuance of the Proposed Agency Action. A protest filed by a local exchange company shall be applicable only to that local exchange company's territory and shall not prevent LDDS WorldCom from using a concentration of no more that three pay telephone instruments per access line or providing 0+ local and 0+ calls from store-and-forward pay telephones located in confinement facilities in a non-protesting

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LEC's territory. A protest of one waiver should not prevent the action in the second waiver from becoming final.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that LDDS WorldCom's petition for waiver of Rule 25-24.515(9), Florida Administrative Code, and Order No. 14529 to allow line concentration of up to three pay telephone instruments per access line, or the equivalent thereof, for its pay telephones located in confinement facilities, is hereby granted. It is further

ORDERED that LDDS Worldcom's petition for waiver of Rule 25-24.515(15), Florida Administrative Code, currently prohibiting it from providing 0+ local and 0+ intraLATA calls from store-and-forward pay telephone located in confinement facilities, is hereby granted. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate agency petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed. It is further

ORDERED that a protest filed by a local exchange company shall be applicable only to that local exchange company's territory and shall not prevent LDDS WorldCom from using a concentration of no more than three pay telephone instruments per access line or providing 0+ local and 0+ calls from store-and-forward pay telephones located in confinement facilities in a non-protesting LEC's territory. It is further

ORDERED that a protest of one waiver shall not prevent the action in the second waiver from becoming final.

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By ORDER of the Florida Public Service Commission, this 11th
day of March, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

Commissioner Susan F. Clark dissented.

(S E A L)

WPC

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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 and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), 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 April 1, 1997.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a).