**FLORIDA PUBLIC SERVICE COMMISSION**

 **Capital Circle Office Center 2540 Shumard Oak Boulevard**

 **Tallahassee, Florida 32399-0850**

 **M E M O R A N D U M**

 **May 30, 1996**

**TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)**

**FROM: DIVISION OF COMMUNICATIONS (K. LEWIS)**

 **DIVISION OF LEGAL SERVICES (BILLMEIER)**

**RE: DOCKET NO. 951198-TC - GLOBAL TEL\*LINK CORPORATION - PETITION FOR WAIVER OF RULES AND POLICIES TO PERMIT PROVISION OF 0+ LOCAL AND 0+ INTRALATA UTILIZING STORE AND FORWARD TECHNOLOGY AT PAY TELEPHONES LOCATED IN CORRECTIONAL INSTITUTIONS AND OTHER CONFINEMENT FACILITIES.**

**AGENDA: 6/11/96 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**SPECIAL INSTRUCTIONS: I:\PSC\CMU\WP\951198B.RCM.
Place directly after Dockets Nos. 960492-TP and 951546-TP.**

 **CASE BACKGROUND**

 Global Tel\*Link Corporation (GTC) holds Certificate No. 3878 to provide pay telephone service and Certificate No. 3972 to provide interexchange telecommunications service.

 On October 6, 1995, GTC filed a Petition for Waiver of Rule 25-24.515(7), Florida Administrative Code, and the policies contained in several Commission Orders which prohibit pay telephone providers and/or operator service providers from handling 0+ local and 0+ intraLATA calls. GTC's Petition also requested authorization to bill such calls, where applicable, through the services of the appropriate local exchange companies (LECs) since some LECs presently block such billing.

 On February 27, 1996, the Commission issued Notice of Proposed Agency Action Order No. PSC-96-0299-FOF-TP which denied GTC's Petition. On March 19, 1996, GTC filed a timely protest requesting the Commission revisit Order No. PSC-96-0299-FOF-TP. Staff filed a recommendation addressing GTC's protest and the matter was considered at the May 7, 1996 agenda conference. After some discussion, the Commission voted to defer the item along with several other dockets which addressed the routing of 0+local and 0+intraLATA traffic (Dockets Nos. 960492-TP, 951546-TP & 960407-TC).

 In order to address the concerns raised by the Commissioners and the parties at the May 7, 1996 agenda conference, staff has filed the following recommendation.

 **DISCUSSION OF ISSUES**

**ISSUE :** Should the Commission grant Global Tel\*Link's Petition for a waiver of Rule 25-24.515(7), Florida Administrative Code, Rule 25-24.620(2)(c) and (d) and the policies contained in Orders Nos. 95-0918, 95-0203, and 24101 to permit it to handle 0+ intraLATA and 0+ local calls at confinement facilities at no more than the rates charged by the serving local exchange company for the same call?

**PRIMARY RECOMMENDATION:** Yes.

**ALTERNATIVE RECOMMENDATION:** Yes, with the restriction that Global Tel\*Link may handle 0+local and 0+intraLATA traffic only in those areas that are served by price regulated companies.

**PRIMARY STAFF ANALYSIS:** On October 6, 1995, GTC filed a Petition for Waiver of Rule 25-24.515(7), Florida Administrative Code, and the policies contained in several Commission Orders which prohibit pay telephone providers and/or operator service providers from handling 0+ local and 0+ intraLATA calls via store and forward technology in confinement facilities. GTC's Petition also requested authorization to bill such calls, where applicable, through the services of the appropriate local exchange companies (LECs) since some LECs presently block such billing. On February 27, 1996, the Commission issued Notice of Proposed Agency Action Order No. PSC-96-0299-FOF-TP denying GTC's Petition. The Order discussed the reasons for denial as follows:

Absent the Supreme Court's stay, we might find GTC's arguments persuasive. We voted to allow intraLATA competition in Order No. PSC-95-0203-FOF-TP. Under that Order, IXCs will be allowed to carry traffic currently reserved to the LECs under the time schedule described in that Order. If the Order were in force, NPATS would be allowed to carry such traffic under the same timeframe as IXCs. However, the effect of the stay is to maintain the status quo until the stay is lifted. While we believe the revision to Chapter 364, Florida Statutes might open the intraLATA market to competition, the Court had adequate opportunity to consider the revisions to Chapter 364 when deciding whether to issue the stay and chose to stay our Order. Since the Court has stayed Order No. PSC-94-0203-FOF-TP opening the entire intraLATA market to competition, we cannot avoid the Court's order by opening a portion of the market for NPATS as requested by GTC.

 It seems clear from the above that the basis for the denial was the Commission's concern that opening the 0+ local and 0+ intraLATA markets to competition would violate the stay of Order No. PSC-95-0203-FOF-TP. Since the Court has lifted the stay and the companies have withdrawn their appeals, the stay is no longer a consideration. GTC filed a timely protest to the Order. Staff recommends GTC's Petition be approved and the company be allowed to handle 0+ local and 0+ intraLATA calls from confinement facilities.

 History of the Policy

 For security reasons, pay telephones in confinement facilities generally only allow collect local and long distance calls to be made. Most pay telephone providers serving confinement facilities use store and forward technology. A pay telephone instrument that uses store and forward technology contains software which has been programmed to outpulse a collect call on a seven digit or 1+ basis. After the inmate dials the 0+ collect call and states his name, the pay telephone stores the name in memory and utilizing preprogrammed software, outpulses the call on a 1+ basis. An automated operator then announces the call as collect from the inmate, using the prerecorded name and the called party may choose to accept or refuse the call. By processing calls in this manner, the pay telephone company is providing its own operator services via the store and forward technology of a "smart phone".

 The policy of reserving 0+ local and 0+ intraLATA calls for the serving local exchange company (LEC) has been in effect since pay telephone service first became competitive in Florida in 1985. This policy was reaffirmed in Orders Nos. 16343, 20489, 21614, 22243, and 24101. The policy evolved to address the needs of the public and the newly developing pay telephone and operator service companies and protect LEC revenues in an environment of rate of return regulation.

 This policy was considered again in Docket No. 930330-TP, Investigation into IntraLATA Presubscription. Order PSC-95-0203-FOF-TP, issued February 13, 1995, found that intraLATA presubscription was in the public interest. This meant that interexchange carriers (IXCs) would be allowed to compete with LECs for 1+ and 0+ intraLATA toll traffic for the first time. 0+ local traffic would still be reserved to the LECs. Large LECs were ordered to implement intraLATA presubscription throughout their service areas by December 31, 1997. Small LECs would be allowed to delay implementation until a bona fide request was received. The Commission denied Motions for Reconsideration filed by GTEFL and BellSouth. GTEFL and BellSouth appealed the Order but the appeals were withdrawn and the Order is now in effect.

 Global's Request

 GTC has asked the Commission to allow it to handle and bill both 0+ local and 0+ intraLATA at its pay telephones located in confinement facilities. GTC points to the statutory amendments opening local service to competition and the company's capability to handle such traffic as reasons the Commission need no longer reserve such traffic for the LEC. The petition also states that the store and forward technology GTC presently uses to handle and bill interLATA calls in confinement facilities will provide the same benefits to the institutions, the company, and the end-user if employed for local and intraLATA calls. The benefits include the elimination of operator abuse by inmates, reduction of fraudulent calling, and possibility of lower rates.

 Revenue Impact on Small LECs

 According to Global Tel\*Link, the only small LEC territory where it presently operates any pay telephones in confinement facilities is in the territory of Quincy Telephone Company (QTC) where it operates 10 pay telephones at the Gadsden County Jail. Without doing a traffic study QTC stated it was unable to identify the total revenue impact for intraLATA calls. However, QTC estimated that operator service revenues from 0+ local calls at GTC's ten pay telephones in the jail averaged $4,250 a month and would equate to approximately $51,000 per year. This annual figure would be reduced by the amounts QTC pays to Sprint for providing operator services and for terminating access. QTC was unable at this time to break down this data for individual pay telephones companies operating in confinement facilities, consequently, it could not provide figures for the total revenue impact.

 QTC was also concerned that if one pay telephone company were allowed to handle 0+local and 0+intraLATA traffic from confinement facilities in its service territory then more would surely follow resulting in additional revenue losses for the company. In summary, QTC stated that "the revenue loss will be significant and would necessitate an increase in basic service rates." However, QTC was unable to quantify the possible revenue loss at this time.

 In order to protect QTC from the negative revenue impact that may result if the Commission grants GTC's petition, we must have a legal basis. Staff can find no clear legal basis under which the Commission could provide such protection to QTC. In staff's view, the Florida Statutes only offers non-price regulated LECs protection from ALEC entry and for competition for basic services. There is no provision for extending this to a protection from pay telephone providers offering non-basic services, such as the services GTC offers from the correctional facility. Pay telephone providers for confinement facilities are selected based upon competitive bids to offer the services. Presumably, as a provider of pay telephone service, QTC could have placed a bid to obtain the contract for the Gadsden County Jail.

 As a rate base regulated LEC, QTC may petition to increase its rates if significant revenue losses occur. However, as a rate base regulated company, QTC also has the ability to file tariffs to reprice some of its non-basic services to compensate for revenue losses.

 Impact on End User Customers

 GTC's petition states on page 7, "....Global is proposing to offer the service at rates less than the currently authorized 0+local and 0+intraLATA rate caps." Staff views this as an obvious benefit to rate payers. All calls from confinement facilities are placed on a collect basis. Therefore, persons benefiting will most likely be the family, friends, and legal counsel of the inmate. GTC has also stated that it can properly rate Extended Calling Service (ECS) calls from its pay telephones located in confinement facilities. As an additional safeguard, Issue 1 clearly states that 0+local and 0+intraLATA calls will be billed at the "no more than the rates charged by the serving local exchange company for the same call.

 Another benefit to the public is that the store and forward technology offered by GTC eliminates the ability of the inmate to reach a live operator so that the possibility of harassment or placing fraudulent calls is greatly reduced.

 At the May 7, 1996 agenda BellSouth voiced concerns about end users not being able to dial around to BellSouth until intraLATA presubscription was implemented in their service area. As stated at the agenda by a representative of BellSouth, this is not a concern in this docket as Rule 25-24.515(15), F.A.C. exempts pay telephones located in confinement facilities from the requirement to provide access to other carriers.

 Staff's Conclusion

 Staff believes Chapter 364, Florida Statutes, allows competition for all types of calls, including 0+ intraLATA and 0+ local calls. Alternative local exchange carriers (ALECs), for example, are permitted under Section 364.337, Florida Statutes, to function like LECs. Staff can find no reason to prevent NPATS from carrying the same calls. It is the intent of Chapter 364 to encourage competition whenever possible and avoid unnecessary regulation. Further, allowing competition for 0+ intraLATA and 0+ local calls is a step toward a more competitive market. Consumers may benefit from lower rates and the existing pay telephone rules are suitable for regulating any problems that may arise.

 Staff recommends that GTC's petition be granted and the company be allowed to handle 0+ local and O+ intraLATA calls from confinement facilities.

**ALTERNATIVE STAFF ANALYSIS:** Because there may be a significant revenue impact to Quincy Telephone Company (QTC), the Commission should only grant Global's petition for those areas of Florida that are served by price regulated local exchange companies. Granting the petition with this restriction will provide no immediate benefit to GTC, since it does not presently operate pay telephones in the service areas of any price regulated companies, though it may in the future.

 Section 253(b) of the Telecommunications Act of 1996 states "Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."

 From the information provided by QTC, it is possible that consumers may be harmed through increases in local rates because QTC may be forced to request an increase in basic service rates due to the revenue losses brought on by granting GTC's petition.

 Also, Section 364.14, Florida Statutes, gives the Commission the authority to readjust rates whenever it finds upon its own motion or upon complaint that the rates collected are insufficient to yield reasonable compensation for the service rendered. If QTC can demonstrate that it is no longer earning sufficient revenue to provide basic telecommunications service, it would be entitled to a readjustment of its rates.

**ISSUE 2:** Should local exchange companies be ordered to bill 0+ local and 0+ intraLATA calls placed from confinement facilities and handled by Global Tel Link when billing for such calls is requested through a valid billing and collection agreement?

**RECOMMENDATION:** Yes.

**STAFF ANALYSIS:** The LECs should be required to bill such calls when requested through a valid billing and collection agreement. LECs will lose revenues they would have earned from the confinement facilities served by GTC. However, the LECs will still receive some benefit through whatever billing agreements they reach with GTC.

**ISSUE 3:** Should this docket be closed?

**RECOMMENDATION:** Yes. If the Commission approves either the staff primary or alternative recommendation on Issue 1 and approves the staff recommendation on Issue 2, this docket should be closed if no person whose substantial interests are affected files a protest within 21 days of the issuance of the Order. If the Commission does not approve either of the staff recommendations, this docket should be set for hearing.

**STAFF ANALYSIS:** If the Commission approves either the staff primary or alternative recommendation on Issue 1 and approves the staff recommendation on Issue 2, this docket should be closed if no person whose substantial interests are affected files a protest within 21 days of the issuance of the Order.

 If the Commission does not approve either of the staff recommendations, this docket should be set for hearing. GTC filed a timely protest to an earlier order on the issues in this docket. There is no need to require the company to file another protest on the same issue.