

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Jane H. Adler for cancellation of Pay Telephone Certi- ficate No. 1633.)	DOCKET NO. 891340-TC
_____)	
In re: Application of Adler Communi- cations, Inc. for certificate to provide pay telephone service.)	DOCKET NO. 891341-TC ORDER NO. 22907 ISSUED: 5-8-90
_____)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
THOMAS M. BEARD
BETTY EASLEY
GERALD L. GUNTER

ORDER CANCELLING PAY TELEPHONE CERTIFICATE
AND
NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING PAY TELEPHONE CERTIFICATE AND
AUTHORIZING RULE WAIVER FOR PENAL INSTITUTIONS

BY THE COMMISSION:

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

This Order contains Final as well as Proposed Agency Actions. The determinations in Section II, below, are Final Agency Actions. Since the Proposed Agency Action part of this Order both grants a certificate and decides certain other issues, we Order that the Proposed Agency Action be divided into two separate parts for the purpose of protests. Section III shall constitute one part and Section IV shall constitute another. A protest to this Order shall state the section or sections to which it refers. For purposes of petitions for formal proceedings protesting our proposed actions, Sections III and IV are hereby severed from each other and from the other actions in this Order.

DOCUMENT NUMBER-DATE

03997 MAY-8 1990

PSC-RECORDS/REPORTING

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Any protest of the actions in either Section III or IV shall not prevent another section for which no protest is received from becoming final.

I. BACKGROUND

Jane H. Adler has been a certificated pay phone provider in Florida since August 6, 1987. On November 8, 1989, a letter was received on behalf of Jane H. Adler (Ms. Adler) requesting a name change from "Jane H. Adler" to "Adler Communications, Inc." Commission Staff informed Ms. Adler that a new application would have to be filed under the name of Adler Communications, Inc., and that the original certificate should be cancelled.

II. CANCELLATION OF CERTIFICATE (Final Agency Action)

Ms. Adler has requested cancellation of Certificate No. 1633 issued in her name. Cancellation of her certificate will in no way affect her obligation to pay any outstanding Regulatory Assessment Fees that may be due to this Commission for the period the certificate was active. We, therefore, approve Ms. Adler's request and hereby cancel her certificate and close Docket No. 891340-TC.

III. PATS CERTIFICATE AND RULE WAIVER (Proposed Agency Action)

On November 15, 1989, Adler Communications Inc., (Adler) submitted an application for a certificate of public convenience and necessity to enable it to provide pay telephone service (PATS), pursuant to Section 364.33, Florida Statutes. PATS providers are subject to the provisions of Rules 25-24.505 through 25-24.520, Florida Administrative Code. Additionally, PATS providers must comply with our decisions in Order No. 14132, issued February 27, 1985, in Docket No. 860723-TP; Order No. 20489, issued December 21, 1988, in Docket No. 871394-TP; and Order No. 20610, issued January 17, 1989, in Docket No. 860723-TP, among others.

In reviewing the application of Adler, we find it contains the information required for certification as set forth in the Orders and Rules cited above. Based on the foregoing, we propose to grant a certificate to Adler to provide toll and local public pay telephone service consistent with the conditions and requirements set forth in Rules 25-24.505 through 25-24.520, Florida Administrative Code.

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Adler has indicated that it intends to place pay telephones in penal institutions. Because of the potential for fraud and abuse, Adler has proposed denying the inmates access to repair, 911, 411, and all locally available interexchange carriers (IXCs) other than the presubscribed IXC for that location. InterLATA calls would be handled by the presubscribed IXC. Adler's proposed handling of local and toll intraLATA calls is discussed separately in Section IV below. In order for Adler to provide the restricted telephone service described above, a waiver of Rule 25-24.515(3), (4), and (6), Florida Administrative Code, would be necessary. Adler has requested such a waiver.

By Order No. 21221, issued May 11, 1989, we granted SouthernNet Services, Inc. a waiver of Rule 25-24.515(6), Florida Administrative Code. By Order No. 21525, issued July 10, 1989, we granted Phone Control Security, Inc. a waiver of Rule 25-24.515(3), (4), and (6), Florida Administrative Code. By Order No. 21767, issued August 22, 1989, Communications Central, Inc. was also granted a waiver of Rule 25-24.515(3), (4), and (6), Florida Administrative Code. By Order No. 22472, issued January 25, 1990, Aqua-Com-Co., Inc. was granted a waiver of Rule 25-24.515(3), (4), and (6), Florida Administrative Code. In all of these Orders, the waiver was limited to only those pay telephones placed in penal institutions for the use of inmates.

Upon consideration, we find it appropriate to grant Adler's rule waiver request. However, consistent with Orders No. 21221, 21525, 21767, and 22472, discussed above, this waiver shall apply only to those pay telephones in penal institutions and shall include only those restrictions set forth above. Any other pay telephones that Adler may install shall be subject to all our rules pertaining to pay telephone service.

In addition, because the inmates will be restricted to only one IXC, Adler shall not be permitted to charge more than the AT&T Communications of the Southern States, Inc. (ATT-C) Direct Distance Dialing (DDD) time-of-day rate, plus applicable operator charges, for interexchange calls placed by the inmates. This means Adler will not be allowed to bill the additional charge of up to one dollar that we normally allow nonLEC PATS providers to bill. We believe it is necessary to limit the rates where the billed party has no choice of

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interexchange carrier. This limitation is consistent with our prior actions concerning pay telephones located in penal institutions.

IV. DIVERSION OF 0+ LOCAL CALLS AND COLLECTION OF SURCHARGES (Proposed Agency Action)

Adler stated that all 0+ local and intraLATA toll calls would be routed "utilizing LEC network facilities, with the LEC providing operator services for all 0+ intraLATA toll calls." Adler also stated that all 0+ local and interLATA toll calls would be "processed by the technology resident within the payphone, with 0+ local calls routed over LEC network facilities for completion, and all 0+ interLATA calls routed over IXC network facilities." Adler indicated that it would charge the inmates no more than the applicable LEC rate authorized by the Commission, if the Commission allows it to divert 0+ local calls from the LEC.

The technology which Adler proposes to implement is commonly called store and forward technology, sometimes referred to as "operator in a box." This would allow Adler to convert 0+ dialed end user calls within the payphone, so that the resulting call originates from the payphone on a direct dial basis (the end user dials 0+ NXX-XXXX and the phone sends out NXX-XXXX for a local call). Details sufficient to bill calls are retained by the originating telephone and then downloaded to a clearinghouse or billing and collection agency. In turn, the clearinghouse processes the charges through contracts with the LECs so the charge appears on the called party's local telephone bill.

In Order No. 19095, issued April 4, 1988, in Docket No. 871394-TP, we stated:

By Florida law, competition with the local exchange telephone company is illegal unless the Commission has determined that such competition is in the public interest. See Sections 364.335 and 364.337, Florida Statutes. In Orders Nos. 13932, 13912 and 14621, we clearly stated our intent that the local exchange company be the carrier of all one-plus and zero-plus intraLATA traffic. "Zero-plus" traffic means telephone calls in which the end user dials "0" plus seven or ten digits to

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reach the desired party. Likewise, "one-plus" traffic means telephone calls in which the end user dials "1" plus seven or ten digits to reach the desired party. AOS providers typically route intraLATA zero-plus calls to their own operators in direct contravention of these order. Therefore, AOS providers must comply with the Commission's zero-plus and one-plus intraLATA restriction requiring that all such local, intraEAEA and interEAEA calls should be routed to the local exchange company. ("EAEA" refers to the Florida-specific toll transmission areas created by this Commission. It stands for "equal access exchange area.")

Order No. 19095, at page 5 (emphasis added). By Order No. 20489, the final order in that docket, issued December 12, 1988, after the hearing, we held that "AOS providers shall route all zero plus (0+) intraLATA or intramarket calls to the LEC. There has been no new evidence presented to alter our previous rulings on this issue." Order No. 20489, at page 10 (emphasis added). Additionally, Order No. 20610, issued January 17, 1989, in Docket No. 860723-TP, reiterated this policy, as did Order No. 21614, issued July 27, 1989.

Accordingly, we propose denying Adler's request to handle 0+ local collect calls utilizing store and forward technology resident within the payphone. Pursuant to our existing Orders, such calls are reserved to the LECs. We note, however, that the question of diversion of 0+ local calls is an issue in the upcoming hearing scheduled for August, 1990, in Docket No. 860723-TP.

By Order No. 20610, a surcharge of up to \$1.00 was established to compensate nonLEC PATS providers for their inability to collect revenues on coinless calls. Further, Order No. 21614 required all LECS to bill, collect, and remit a portion of the surcharge to non-LEC PATS providers on 0- and 0+ intraLATA LEC-handled calls placed from non-LEC pay telephones.

By Order No. 22385, issued January 9, 1990, we approved a fixed surcharge amount of \$.75 per call to be billed by the LEC and paid to the nonLEC PATS provider. This amount was agreed upon by the LECs and by a majority of the members of the Florida Pay Telephone Association, Inc., as a compromise measure due to the LECs' inability to bill a flexible amount for the surcharge.

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In Section III above, we noted our concerns over rate levels where the billed party has no choice of IXC. For the same reasons, we also find it appropriate to deny Adler the up to \$1.00 PATS surcharge on 0+ local and toll intraLATA calls placed from its pay telephones in penal institutions. The propriety of surcharges on pay telephones located in penal institutions is also an issue in the upcoming hearing scheduled for August, 1990, in Docket No. 860723-TP.

Based on the foregoing, it is hereby

ORDERED by the Florida Public Service Commission, that the petition of Jane H. Adler requesting cancellation of her certificate to provide Pay Telephone Service is approved. It is further,

ORDERED that Jane H. Adler, if she has not already done so, is to return Certificate No. 1633 and remit any outstanding regulatory assessment fees to this Commission. It is further

ORDERED that Docket No. 891340-TC be and the same is hereby closed. It is further,

ORDERED that the application of Adler Communications, Inc., for a certificate to provide pay telephone service is hereby granted. It is further

ORDERED that Adler Communications, Inc.'s request for waiver of Rule 25-24.515(3), (4), and (6), Florida Administrative Code, is hereby granted as set forth herein. It is further

ORDERED that Adler Communications, Inc. shall not charge more than AT&T Communications of the Southern States, Inc.'s Direct Distance Dialing time-of-day rate, plus applicable operator charges, for interexchange calls, as set forth in the body of this Order. It is further

ORDERED that Adler Communications, Inc.'s proposal to handle automated 0+ local intraLATA or toll collect calls is denied as set forth in the body of the Order. It is further

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ORDERED that Adler Communications, Inc. may not collect any surcharge on 0+ local or toll intraLATA calls for its PATS instruments located in penal institutions pending final determination of this issue in Docket No. 860723-TP. It is further

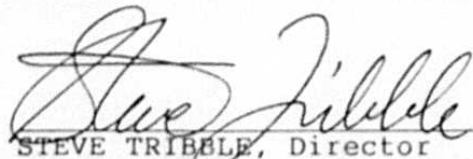
ORDERED that the certificate granted herein shall be effective at the completion of the protest period assuming no protest is received thereto. It is further

ORDERED that Docket No. 891341-TC shall be closed after the protest period has passed, provided there are no objections to any proposed agency action therein. It is further

ORDERED that the determinations in Section II hereof, are Final Actions. It is further

ORDERED that determinations in Sections III and IV, herein, are Proposed Agency Actions that have been separated for protest purposes. Protests to one Section shall be effective as to that Section only and shall not keep Proposed Agency Actions in the other Section from becoming final. Protests to this Order shall state the Section or Sections to which they refer.

By ORDER of the Florida Public Service Commission,
this 8th day of MAY, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

As identified in the body of this order, our determinations in Sections III and IV, hereof, are 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 at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on May 29, 1990. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent 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.

If the Commission's actions in Sections III and IV of this order become final and effective on the date described above, any party adversely 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 sewer 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), Florida Rules of Appellate Procedure.

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Any party adversely affected by the Commission's final action in Section II of this Order may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer 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 after the issuance 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), Florida Rules of Appellate Procedure.