

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: PETITION FOR DECLARATORY ) DOCKET NO. 940497-TC  
STATEMENT RE: RULE 25-24.516(9), ) ORDER NO. PSC-94-1280-DS-TC  
F.A.C., BY NORTH AMERICAN ) ISSUED: October 17, 1994  
INTELECOM, INC. )  
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The following Commissioners participated in the disposition of this matter:

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

ORDER DENYING NORTH AMERICAN INTELECOM, INC.'S  
PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

BACKGROUND

On May 9, 1994, North American InTeleCom, Inc. (NAI), filed a Petition for Declaratory Statement to the effect that Rule 25-24.515(9), Florida Administrative Code, does not prohibit NAI's particular configuration of providing pay telephone service to various correctional institutions. That configuration includes the use of an on-site controller to which the pay telephones are connected, which is in turn connected to NAI's San Antonio central facility, NAI's point of presence (POP) in Jacksonville and the LEC's central office. Calls are backhauled to San Antonio for screening and billing and then returned to the controller for routing as intraLATA calls to the LEC or interLATA calls to an IXC.

The result of this configuration is that a total of 355 pay telephones are served by 144 pay telephone access lines (PAL's). Petitioner describes this as differing from the usual "all-on-site" arrangement in that normally there would be more PALs, i.e., one PAL per pay telephone. NAI asserts that although it pays less for PALs to the LECs than would normally be the case, it pays more for special access loops as a result.

Rule 25-24.515(9) states that

Each telephone station must be connected as provided in the pay telephone access tariff offered by the local exchange company.

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Petitioner notes that neither the Centel nor St. Joseph tariff specifies one PAL per pay telephone, but that the Alltel tariff does so specify. Petitioner asserts that in all three cases, the NAI configuration used was worked out through consultation with the LEC involved. Thus, Petitioner argues that NAI's configuration is clearly not prohibited under the cited rule with respect to Centel's or St. Joseph's tariffs and, in the case of Alltel, not prohibited because Alltel had no objection.

The uncertainty petitioner wishes to dispel through this process is whether each pay telephone must be connected to the central office of the LEC by a PAL, as "[s]taff appears to interpret Rule 25-24.515(9)", petition, p. 3, and, if so, whether the fact of the LECs' participation in NAI's configuration exempts NAI from that policy.

#### DISCUSSION

As indicated in the discussion at the September 6, 1994 agenda conference, the show cause proceeding involving Intelcom, Docket No. 930416-TC,<sup>1</sup> includes consideration of the same issues raised by petitioner in this declaratory statement proceeding. That circumstance raises a threshold issue as to whether a declaratory statement should be issued. In this regard, we note that the decision to issue declaratory statements is discretionary. North Shore Bank v. Town of Surfside, 72 So. 2d 659 (Fla. 1954); Kelner v. Woody, 399 So. 2d 35 (Fla. 3rd DCA 1981). Moreover, an agency should decline to issue a declaratory statement if the same issues are pending before a court which could resolve those issues. Couch v. State, 377 So. 2d 32 (1st DCA 1979); Taylor v. Cooper, 60 So. 2d 534 (Fla. 1952)). That principle would seem to be even more compelling here, where the agency's Legal division is considering those issues in one proceeding and the Appeals division is asked to consider them in a different proceeding.

In recommending denial of the petition, we do not address the merits, but merely note that it would be inconsistent with judicial economy to have the same issue brought before us twice in parallel proceedings.

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<sup>1</sup> In re: Investigation of North American Intelcom, Inc. for incorrect billing of collect calls from various prisons.

The petition will, even though dismissed, have served a useful purpose in bringing to our attention factual and legal issues which may be pertinent to the proper resolution of the show cause docket. However, as we are unaware of any impediment to petitioner's assertion of these issues in that docket, they would appear to be more properly and efficiently addressed there.

In view of the above, it is

ORDERED that North American Intelcom, Inc.'s Petition for Declaratory Statement be denied. It is further

ORDERED that this docket be closed.

BY ORDER of the Florida Public Service Commission, this 17th day of October, 1994.

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BLANCA BAYÓ, Director  
Division of Records and Reporting

by: Kay J. [Signature]  
Chief, Bureau of Records

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.

Any party adversely affected by the Commission's final action in this matter 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

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pursuant to Rule 9.110, Florida Rules of Civil 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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