**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**

 **January 25, 1996**

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

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

 **DIVISION OF LEGAL SERVICES (BILLMEIER) (BARONE)**

 **DIVISION OF AUDITING & FINANCIAL ANALYSIS (MADDRON)**

**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.**

 **DOCKET NO. 940984-TC - GLOBAL TEL\*LINK CORPORATION** **-APPLICATION FOR CERTIFICATE TO PROVIDE PAY TELEPHONE SERVICE AND REQUEST FOR VOLUNTARY CANCELLATION OF PAY TELEPHONE CERTIFICATE NUMBER 2326 ISSUED TO GLOBAL TELCOIN INC.**

 **DOCKET NO. 940985-TI - GLOBAL TEL\*LINK CORPORATION - APPLICATION FOR CERTIFICATE TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICE AND REQUEST FOR VOLUNTARY CANCELLATION OF INTEREXCHANGE CARRIER CERTIFICATE 2490.**

**AGENDA: 02/06/96 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE**

**CRITICAL DATES: NONE**

**SPECIAL INSTRUCTIONS: I:\PSC\CMU\WP\951198.RCM**

 **CASE BACKGROUND**

 Global Tel\*Link Corporation (GTC) is the corporate successor to Global Telcoin, Inc. Global Telcoin Inc. currently holds both a pay telephone certificate (No. 2326) and interexchange carrier certificate (No. 2490). On September 16, 1994, GTC filed applications for both a pay telephone and interexchange carrier (IXC) certificate. The interexchange carrier certificate (3972) was granted at the November 7, 1995 regular agenda conference.

 Both applications had been held pending resolution of overcharges originating with the management of its predecessor corporation, Global Telcoin Inc. At the November 7, 1995 agenda conference, the Commission voted to grant GTC a certificate to provide interexchange telecommunications service. However, subsequent to the agenda conference staff discovered that the amount of overcharging referenced in the recommendation was incorrect. Therefore, staff conducted further investigation. GTC has now provided staff with documentation identifying the amount of overcharges which occurred in Florida. This recommendation will address how the identified overcharges should be refunded as well as the company's application for both a pay telephone and interexchange carrier certificate.

 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. This recommendation will also address GTC's Petition.

 **DISCUSSION OF ISSUES**

**ISSUE :** Should the Commission grant Global Tel\*Link Corporation's applications for pay telephone and interexchange carrier certificates and cancel the existing pay telephone certificate no. 2326 and interexchange certificate no. 2490 issued in the name of Global Telcoin, Inc.?

**RECOMMENDATION:** Yes, grant Pay Telephone Certificate No. 3878, Interexchange Certificate No. 3972 and cancel Pay Telephone Certificate No. 2326 and Interexchange Certificate No. 2490.

**STAFF ANALYSIS:** Global Tel\*Link Corporation's applications for pay telephone and interexchange carrier certificates filed on September 16, 1994, disclosed that its predecessor corporation, Global Telcoin, Inc., held pay telephone and interexchange carrier certificates. GTC also disclosed that the management of Global Telcoin, Inc. had engaged in billing practices which resulted in consumers being overcharged for telephone calls in Florida and several other states. According to a report compiled by Price Waterhouse LLP and filed with the Commission, the overcharges resulted from: overtiming calls, adding on charges not disclosed in its tariffs, and using per minute rates exceeding those in its tariffs and the Commission's rate caps. These practices were put in place by the prior management of GTC. GTC is now under new management. In several letters to Staff, GTC's counsel has stated that all responsible members of the prior management team have been terminated and are no longer employed by GTC. In addition, GTC's counsel has stated that the billing practices which led to the overcharging have been halted. A review of GTC's financial capabilities shows that GTC has sufficient financial resources to provide the proposed telecommunications service.

 In April of 1995, a class action suit was brought against the company in the Circuit Court of Mobile County, Alabama for overcharges. Staff has corresponded and held meetings with representatives of GTC concerning these overcharges. According to filings submitted by GTC, there are 22,590 telephone calls which originated in Florida subject to refunds totaling $13,948. In addition, Price Waterhouse estimated setup charges totaling $250 were overbilled in Florida. Setup charges refer to the extra time (approximately 15 seconds) that had been added on to the beginning of calls. GTC has settled the class action suit brought in Alabama and is ready to begin making refunds to Florida customers. Issue 2 deals with the amount overcharged, interest calculations, and the method for refunding the overcharges.

 Staff recommends that GTC's request for pay telephone and interexchange carrier certification be approved and that the certificates belonging to its predecessor corporation, Global Telcoin, Inc. be cancelled as requested.

**ISSUE :** Should GTC be required to make direct refunds with interest to Florida customers for overcharges of $14,198 for calls placed between January 1, 1990 and May 31, 1994, and file a proposal to dispose of any remaining overcharges that cannot be refunded within 60 days of the date the Proposed Agency Action Order is issued ?

**RECOMMENDATION:** Yes, GTC should be required to make direct refunds with interest to Florida customers for overcharges of $14,198 for calls placed between January 1, 1990 and May 31, 1994, and file a proposal to dispose of any remaining overcharges that cannot be refunded within 60 days of the date the Proposed Agency Action Order is issued.

**STAFF ANALYSIS:** Staff and GTC are in agreement that the amount of overcharging that occurred totals $14,198.00. The company has located approximately 46% of the customers that were overbilled and therefore believes it can accomplish direct refunds of approximately $7,378.00. The Division of Auditing and Financial Analysis has calculated interest on this amount to be $1,571.00. GTC expects it can complete refunds to all overcharged customers it can identify and locate within 60 days of the date the Proposed Agency Action Order is issued. This refund method does not conflict with the settlement agreement reached in the class action suit.

 WHY OTHER REFUND METHODS WERE REJECTED

 Staff considered requiring GTC to refund the remaining balance through a prospective rate reduction. However, this method is not feasible since Staff has learned that the company presently does not have enough pay telephones in place or operator service contracts to effectuate such a refund in a timely manner.

 Staff also considered having GTC pay the remaining refund to the Commission for deposit in the State General Revenue fund. However, the settlement agreement in the class action suit, Civil Action No. 94-1101, does not appear to allow it; it states in pertinent part:

 "For calls originating in Florida, .....unvested refunds shall be distributed pursuant to an order of the state PSC or other relevant regulatory body so long as such order directs refunds to be made in any one or more of the following ways: (i) a prospective rate reduction by Global to effectuate the refund within six months from the date of such order, (ii) a payment to a prisoners fund, a fund to provide telephone service to low income consumers, a consumer organization that represents consumers in ratemaking cases, or a fund to provide information to telephone consumers, or (iii) a distribution that otherwise benefits the Class."

 Therefore, Staff believes GTC should be allowed to file a proposal to accomplish the remainder of the refund in a manner consistent with the settlement after the direct refund has been completed.

**ISSUE :** Should the Commission grant Global Tel\*Link's Petition for a waiver of Rule 25-24.515(7), Florida Administrative Code, 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 utilizing store and forward technology?

**RECOMMENDATION:** No, the Commission should deny Global Tel\*Link's Petition for a waiver of Rule 25-24.515(7), Florida Administrative Code, 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 utilizing store and forward technology.

**STAFF ANALYSIS:** For security reasons, pay telephones in confinement facilities generally only allow collect local and long distance calls to be made. Pay telephone providers serving confinement facilities almost always utilize store and forward technology. This means the pay telephone instrument 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 prerecord 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".

 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. In its petition, 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. These benefits are: elimination of operator abuse by inmates, reduction of fraudulent calling, and possibility of lower rates.

 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.

 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 0+ intraLATA 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 General Telephone Company of Florida (GTEFL) and Southern Bell. GTEFL filed a Notice of Appeal and a Motion for Stay of the Commission Order with the Florida Supreme Court. On October 12, 1995, the Florida Supreme Court issued a stay of Order PSC-95-0203-FOF-TP. Therefore, 0+ intraLATA presubscription cannot implemented at this time. GTC's petition was filed before the Supreme Court issued the stay.

 Absent the Supreme Court's stay, staff might find GTC's arguments persuasive. The Commission 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 that 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. Staff believes the revisions to Chapter 364, Florida Statutes, allows competition for all types of calls, including 0+ intraLATA and 0+ local. The revisions to Chapter 364 took effect in July and the Court issued the stay in October. The Court had adequate opportunity to consider the revisions when deciding whether to issue the stay and chose to stay the Commission's Order. Since the Court has stayed the Commission's order opening the entire intraLATA market to competition, staff does not recommend the Commission open a portion of the market for NPATS as requested by GTC.

**ISSUE 4:** Should these dockets be closed?

**RECOMMENDATION:** Dockets Nos. 950985-TI and 951198-TC should be closed unless a person whose interests are substantially affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. Docket No. 940984-TC should remain open to allow the Commission Staff to monitor the refund process ordered in issue 2 and allow GTC time to file a refund proposal for any remaining overcharges not directly refunded to customers.

**STAFF ANALYSIS:** Whether the Commission adopts or rejects Staff's recommendations in issues 1 through 3, its decision will result in a Proposed Agency Action Order. Dockets Nos. 950985-TI and 951198-TC should be closed unless a person whose interests are substantially affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. Docket No. 940984-TC should remain open to allow the Commission Staff to monitor the refund process ordered in Issue 2 and allow GTC time to file a refund proposal for any remaining overcharges not directly refunded to customers. After GTC has filed its proposal to refund any remaining overcharges, Staff will file another recommendation regarding the proposed refund methodology. If GTC fails to complete the refund in a timely manner or fails to file a refund proposal for any remaining overcharges, Staff will file another recommendation regarding an appropriate penalty.