

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for waiver of) DOCKET NO. 951546-TP
Rule 25-24.515 (7), F.A.C., and) ORDER NO. PSC-96-0868-FOF-TP
Rule 25-24.620(2)(c) and (d),) ISSUED: July 2, 1996
F.A.C., regarding 0+ local and)
0+ intraLATA traffic, by T-)
Netix, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING 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. Background

T-Netix, Inc. (T-Netix) holds Certificate No. 3355 to provide pay telephone service. On December 11, 1995, T-Netix filed a Petition for Waiver of Rule 25-24.515(7), Florida Administrative Code, and Rules 25-24.620 (2) (c) and (d), Florida Administrative Code, which prohibit pay telephone providers and/or operator service providers from handling 0+ local and 0+ intraLATA calls from confinement facilities. On February 27, 1996, we issued Order No. PSC-96-0296-FOF-TP which denied T-Netix's Petition. On March 19, 1996, T-Netix filed a timely protest requesting we revisit Order No. PSC-96-0296-FOF-TP.

We denied T-Netix's original petition because we were concerned granting it might violate the Supreme Court's stay of Order No. PSC-95-0203-FOF-TP in Docket 930330-TP. See Order No. PSC-96-0296-FOF-TP at p. 3. On March 13, 1996, the Court lifted the stay of Order No. PSC-95-0203-FOF-TP and, on April 12, 1996, the appeal was dismissed. Therefore, any effect the litigation in

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Docket No. 930330-TP might have had on this petition is no longer a consideration.

II. 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 to protect LEC revenues in an environment of rate of return regulation. By Order No. PSC-95-0203-FOF-TP, we found intraLATA presubscription to be in the public interest and ordered LECs to implement it pursuant to a timetable established in that Order. Under that Order, interexchange carriers will be allowed to carry intraLATA traffic.

III. T-Netix's Request

T-Netix requested that we allow it to handle and bill both 0+ local and 0+ intraLATA at its pay telephones located in confinement facilities. T-Netix 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 describes how the pay telephone system it uses in confinement facilities works, and states that it assures that inmates cannot engage in harassment of citizens or conduct illicit activity over the telephone network. The pay telephone system T-Netix uses in confinement facilities converts 0+ calls to 1+ automated calls. The inmate must input a personal

identification number (PIN) to place an outgoing call and is restricted to thirty (30) telephone numbers, previously approved by prison officials. T-Netix's system then automatically identifies the originator of the call to the called party. When the called party inputs the validating signal to accept charges for the call, the call is completed. This process is presently used for interLATA calls and 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.

IV. Revenue Impact on Small LECs

Indiantown Telephone System, Inc. (ITS) has 107 pay telephone access lines in its service territory, 45 of which are T-Netix pay telephones located in the Martin County Correctional facility. However, according to ITS, revenues generated by the Martin County Correctional facility account for 93% of its annual paystation revenues. ITS has stated that granting T-Netix's request would result in a loss from present annual revenues of \$114,240 to \$195,396. This equates to a reduction on return on equity by 3.7% to 6.3%. ITS believes this may cause the company to request a basic service rate increase of from 24% to 41.2%, depending upon how T-Netix chooses to handle the 0+local and 0+intraLATA traffic.

It is not clear that we can protect ITS from competition in the pay telephone market. Pay telephone providers for confinement facilities are selected based upon competitive bids to offer the services. Presumably, as a provider of pay telephone service, ITS could have placed a bid to obtain the contract for the Martin County Correctional facility. Even if it fails to win contracts at correctional facilities, ITS may, as a rate base regulated LEC, petition to increase its rates if significant revenue losses occur, and may file tariffs to reprice some of its non-basic services to compensate for revenue losses.

V. Conclusion

We believe it is in the public interest to grant T-Netix's petition. There is no statutory prohibition against allowing NPATS to carry intraLATA traffic. For example, in Section 364.01(3), the Legislature finds that competitive provision of telecommunications services is in the public interest. Section 364.01(4)(b), requires the Commission to encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.

Section 364.01(4)(e), directs the Commission to avoid unnecessary regulatory constraints and Section 364.01(4)(f) requires the Commission to eliminate rules and regulations that would delay or impair the transition to competition.

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. An ALEC could, therefore, carry 0+ intraLATA and 0+ local calls without routing those calls to the LEC. We 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 will be billed at the same or lower rates and T-Netix's system contains security features to prevent inmate fraud presently not offered by the ITS. Our existing pay telephone rules are suitable for regulating any problems that may arise. Accordingly, we grant T-Netix's petition. When this Order becomes final, the company will be allowed to handle and bill 0+ local and 0+ intraLATA calls from confinement facilities. T-Netix shall charge no more than the rates charged by the serving LEC for the same call.

Based on the foregoing, it is

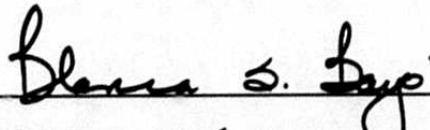
ORDERED by the Florida Public Service Commission that T-Netix, Inc.'s Petition for Waiver of Rule 25-24.515(7), Florida Administrative Code, and Rule 25-24.620(2)(c) and (d), Florida Administrative Code, is granted as described in the body of this Order. It is further

ORDERED that T-Netix, Inc. shall charge no more than the rate charged by the serving local exchange company for 0+ intraLATA and 0+ local calls. It is further

ORDERED that, unless a person whose substantial interests are affected by the action proposed herein files a petition in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, this docket shall be closed.

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By ORDER of the Florida Public Service Commission, this 2nd
day of July, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

LMB

Chairman Susan F. Clark dissents from the Commission's
decision in this docket.

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.

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 July 23, 1996.

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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), Florida Rules of Appellate Procedure.